

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 910. 527 227 34

A. B. ROFF, PLAINTIFF IN ERROR,

228.

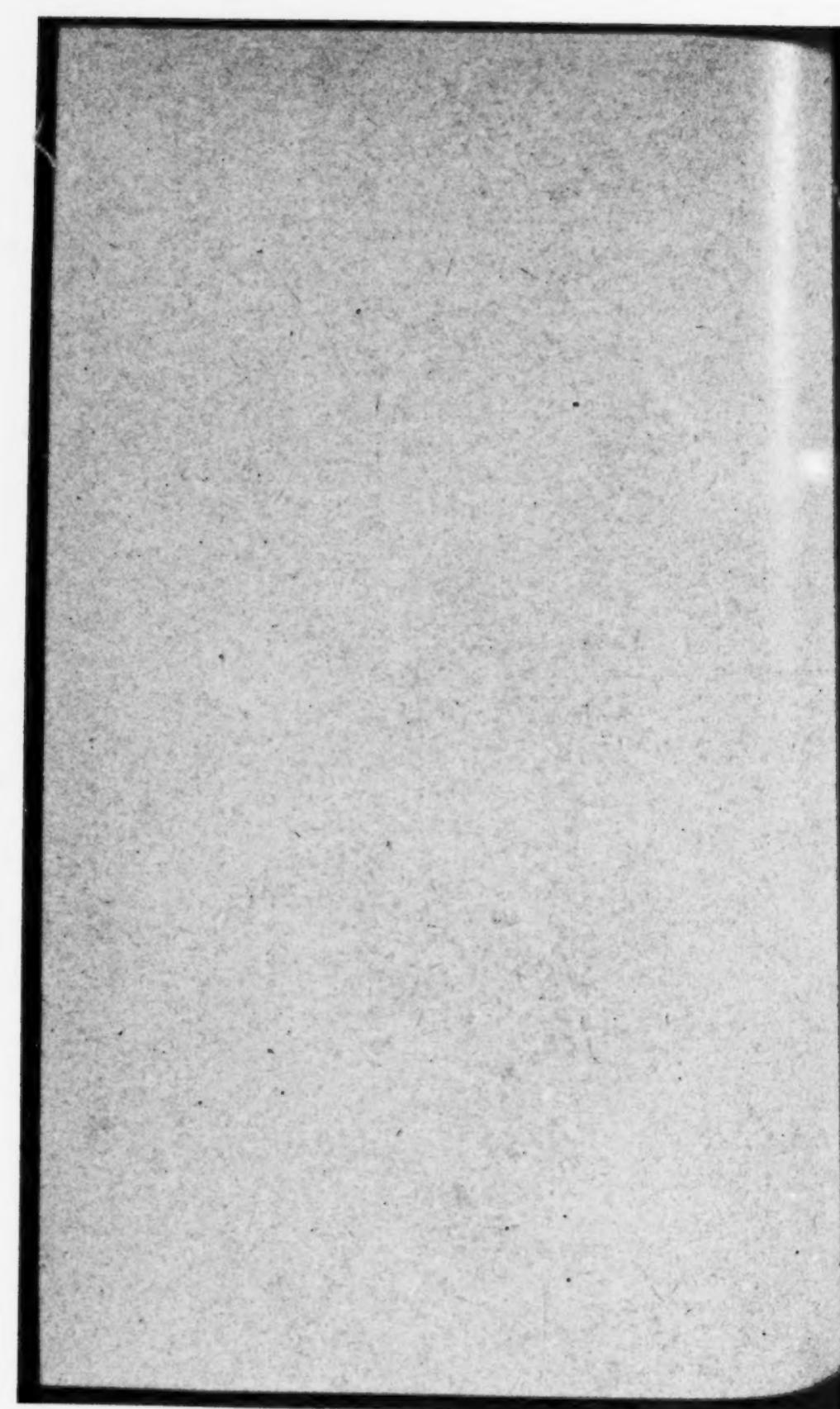
LOUISA BURNETT, AS ADMINISTRATRIX OF B. C.
BURNETT, DECEASED.

IN ERROR TO THE UNITED STATES COURT FOR THE INDIAN
TERRITORY.

FILED FEBRUARY 15, 1895.

(15,794.)

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(15,794.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1894.

No. 910.

A. B. ROFF, PLAINTIFF IN ERROR,

vs.

LOUISA BURNEY, AS ADMINISTRATRIX OF B. C.
BURNEY, DECEASED.

IN ERROR TO THE UNITED STATES COURT FOR THE INDIAN
TERRITORY.

INDEX.

	Original.	Print.
Bill of exceptions	1	1
Amended complaint at law	1	1
Demurrer and plea to jurisdiction	9	5
Judgment	10	5
Allowance of time to file bill of exceptions	10	5
Judge's certificate to bill of exceptions	10	6
Petition for writ of error	11	6
Assignment of errors	13	7
Copy of writ of error	14	8
Copy of citation	15	9
Copy of bond	17	10
Writ of error	19	11
Citation	22	12
Clerk's certificate	24	12



1 In the United States Court in the Indian Territory, Third Judicial Division, at Ardmore.

A. B. ROFF, Plaintiff,

vs.

LOUISA BURNEY, as Administratrix of the Estate of B. C. Burney, Deceased, Defendant. } 1408.

Bill of Exceptions.

1st. Be it remembered that on the 6th day of November, 1893, the plaintiff, A. B. Roff, filed in the United States court in the Indian Territory, third judicial division, at Ardmore, against Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, his first amended complaint at law as follows:

In the United States Court in the Indian Territory, Third Judicial Division, at Ardmore.

A. B. ROFF, Plaintiff,

vs.

LOUISA BURNEY, as Adm'x of B. C. Burney, Deceased, Defendant. } No. 1408. Amended Complaint at Law.

Comes now the plaintiff, leave of the court being first obtained, and files this his first amended complaint in lieu and as a complete amendment to his original complaint filed herein on the 28th day of August, 1893, and makes the same read as follows:

The plaintiff, A. B. Roff, complaining of the defendant, Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, states that both the plaintiff and defendant reside in the Chickasaw nation, Indian Territory; that the plaintiff, A. B. Roff, is a natural-born citizen of the United States of America; that he has never in any way renounced his allegiance to said United States Government,

2 and he has never taken an oath of allegiance to any foreign government of any kind whatsoever or any foreign king, potentate, or ruler of any such government; that plaintiff has ever been and is yet a citizen of the United States as aforesaid. Plaintiff states that in the year 1857 the legislature of the Chickasaw nation passed an act wherein and by reason whereof the heirs and nephews of Wm. H. Bourland, to wit, Amanda, Matilda, Gordentia, & Rum Hamah Bourland, were adopted as citizens of the Chickasaw nation. Now, this plaintiff states and charges the truth to be that on the 7th day of October, 1876, the legislature of the Chickasaw nation passed an act wherein and by reason and virtue whereof the children and nephews of Wm. H. Bourland, to wit, Amanda Bourland, Matilda Bourland, Gordentia Bourland, and Rum Hamah Bourland, were adopted citizens of said Chickasaw nation and members and citizens of the tribe of Chickasaw Indians; a copy of said act of said Chickasaw legislature is hereto annexed,

marked "Exhibit A," and made a part hereof; that said act was but a confirmation of said act of 1857 aforesaid. Now, plaintiff states that said children and nephews of said Wm. H. Bourland aforesaid by reason and by virtue of said act of said Chickasaw legislature became and were and ever since said year 1857 have been members of the tribe of Chickasaw Indians and citizens of said Chickasaw nation and as such were and ever since said date have been entitled to all the rights, immunities, and privileges of a Chickasaw Indian by blood guaranteed unto him by the Constitution and laws of the United States, the constitution and laws of the said Chickasaw nation, and the treaties between the Government of the United States and said tribe of Chickasaw Indians and the tribe of Choctaw Indians.

3 Plaintiff states that on or about the 11th day of November, 1867, that according to the laws, customs, and usages of said tribe of Chickasaw Indians and of said Chickasaw government he was duly and legally married to the said Matilda Bourland (adopted by said act of said legislature as a citizen of said nation and member of said tribe as aforesaid), and that by reason and virtue of said intermarriage with said Matilda Bourland, under the Constitution and laws of the United States, the constitution and laws of said Chickasaw nation, and the treaties between the United States Government and the Chickasaw and Choctaw tribes of Indians, he became and was and ever since said date has been a member of the tribe of Chickasaw Indians, and a citizen of said Chickasaw government, and entitled to all the rights, privileges, and immunities of a Chickasaw Indian by blood; but plaintiff alleges that, contrary to the Constitution and laws of the United States and contrary to the constitution and laws of the said Chickasaw nation and contrary to the treaties between the United States and the Chickasaw and Choctaw tribes of Indians, on the 13th day of October, 1883, said Chickasaw legislature passed another and different act wherein and by reason and virtue whereof it is attempted to repeal said act of said legislature of October 7th, 1876, and said act of 1859, and to disclaim, renounce, and repudiate the citizenship of said Bourland heirs and

4 of this plaintiff, acquired thereunder in the manner aforesaid, and to deny this plaintiff any right as a member of said tribe of Chickasaw Indians or a citizen of said Chickasaw nation. A copy of said last-named act of said Chickasaw legislature is hereto annexed, marked "Exhibit B," and made a part hereof. Now, this plaintiff states and charges the truth to be that ever since the passage of said last-named act the said Chickasaw government and all the courts and officials thereof have refused to recognize this plaintiff as a member of said tribe of said Chickasaw Indians or as a citizen of said Chickasaw government, and that hitherto, since said date, all the courts of said Chickasaw government have refused to entertain jurisdiction of any controversy between this plaintiff and a member of said tribe of Chickasaw Indians, and that they do yet refuse to entertain jurisdiction of such controversies.

Plaintiff states that B. C. Burney during his lifetime was a mem-

ber of the tribe of Chickasaw Indians by blood, and that the defendant, Louisa Burney, as administratrix of the estate of said B. C. Burney, deceased, is a member by blood both of the Chickasaw and Choctaw tribe of Indians and a citizen of both the Chickasaw and Chocktaw nations; that said Louisa Burney is the duly and legally appointed administratrix of the estate and is the surviving widow of said B. C. Burney, deceased, qualified and acting as such administratrix under appointment by the probate tribal court of said Chickasaw nation. The plaintiff states that heretofore, to wit, on the 24th day of October, 1890, one A. H. Knight, a

5 citizen of the United States, in the United States court in the Indian Territory, third judicial division, at Ardmore, recovered judgment against said B. C. Burney, who was then living, and plaintiff, A. B. Roff, for the sum of fifteen hundred and twenty-five (\$1,525.00) dollars, with interest thereon from said date

at the rate of twelve per cent. per annum, and the costs of said suit. The plaintiff states that said judgment was based upon and said suit was filed upon a certain foreign judgment theretofore rendered in the district court of Cooke county, in the State of Texas, and that said court was a court of general jurisdiction and had jurisdiction of the subject-matter of said suit as well as the parties plaintiff and defendant thereto. Plaintiff states that said suit and judgment rendered in the district court of Cooke county, Texas, was based upon a certain promissory note for a valuable consideration paid B. C. Burney, signed by said B. C. Burney, plaintiff; A. B. Roff, and others, and payable to the order of said A. H. Knight at a date anterior to the rendition of said judgment last aforesaid; that said note was made, dated, and was payable in the town of Gainesville, in the county of Cooke, in the State of Texas, and bore interest from date, as per the stipulations in said note, at the rate of twelve per cent. per annum; and this plaintiff alleges that at the date of said note twelve per cent. per annum was the legal and conventional rate of interest under the constitution and laws of Texas, the place where said note was executed, delivered, and payable as aforesaid.

6 Plaintiff states that of all the signers of said note aforesaid that said B. C. Burney was the sole and only beneficiary, and

that this plaintiff never received any consideration for signing said note, but signed the same at the request of and as an accommodation to said B. C. Burney; that said note upon its face showed that plaintiff and all other signers thereto were principal makers thereof and beneficiaries therein; but plaintiff states that he was but a surety upon the same and signed the same, at said Burney's request, to secure the payment of said note.

Plaintiff states that said Burney during his lifetime always admitted and never denied the fact that he was the sole and only beneficiary on said note, and that on the 16th day of July, 1891, said B. C. Burney paid eight hundred (\$800.00) dollars on said judgment of \$1,525.00 rendered in said United States court as aforesaid, and agreed with this plaintiff and said A. H. Knight that he would pay the remainder of said judgment and costs, which plaintiff alleges he never did.

Now, plaintiff states that after the death of said B. C. Burney that he, plaintiff, was compelled to and did pay the remainder of said judgment, whereby and by reason whereof the estate of said B. C. Burney, his heirs, executors, and administrators, promised and became liable to pay plaintiff the sum of ten hundred & forty-four & $\frac{27}{100}$ dollars (\$1,047.27), with interest thereon from the 12th day of June, 1893, at the rate of twelve per cent. per annum. Now, plaintiff states that he has presented his said claim, duly and legally proven and verified, to the defendant, Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, for allowance and payment; but plaintiff states that said administratrix has refused to pay said claim and has wholly disallowed the same, and that the tribal courts of said nation refuse to allow said claim of plaintiff against said estate or to direct or compel said administratrix to allow or pay the same.

Plaintiff states that said administration of the estate of B. C. Burney, deceased, is pending in and that said estate is being administered in the probate tribal courts of the Chickasaw nation under and by virtue of the statutory law of said Chickasaw nation and the rules of decision at common law. Plaintiff states that since the death of said B. C. Burney and since said Louisa Burney qualified as administratrix of said estate as aforesaid that she, the said Louisa Burney, has wrongfully, unlawfully, and tortiously misappropriated and misappropriated the property and funds of said estate, and has wrongfully, unlawfully, and tortiously loaned out divers and sundry sums of money belonging to said estate without first paying plaintiff's debt against said estate, and that said defendant is about to remove a material portion of the money and property of said estate beyond the limits of the Indian Territory and the jurisdiction of this court.

Plaintiff states that by reason of the wrongful, unlawful, and tortious acts of said Louisa Burney as aforesaid she has became and is the administratrix *de son tort* of said B. C. Burney, deceased, and as such is liable to plaintiff for the payment of his debt against said estate.

Wherefore the plaintiff prays that a writ of attachment do issue against the property of said estate of B. C. Burney, deceased, and that upon final hearing he have judgment against said Louisa Burney individually as administratrix of said estate for his said debt, interest, costs of suit, and all proper relief.

HERBERT & HERBERT,

Atlys for Plaintiff.

A. B. Roff, the plaintiff in the foregoing complaint, upon oath states that the statements in said complaint are true, as he verily believes.

A. B. ROFF.

Subscribed and sworn to before me this the 6th day of November, A. D. 1893.

[L. S.]

A. EDDLEMAN,
Notary Public, Third Division, I. T.

The foregoing is endorsed as follows: In the United States court, No. 1408. A. B. Roff, plaintiff, *vs.* Louisa Burney, as adm'x of the estate of B. C. Burney, dec'd, defendant. 1st amended complaint. Filed in open court Nov. 6, 1893. Joseph W. Phillips, clerk. Herbert & Herbert, attorneys for plaintiff.

2nd. That afterwards, on the same day, to wit, November 6th, 1894, at the October term of said United States court, at Ardmore, beginning on the 16th day of October, 1894, and ending November 21st, 1894, the said defendant, Louisa Burney, as such administratrix, filed in said court her demurrer and plea to the jurisdiction of this court as follows :

9 In the United States Court in the Indian Territory, Third Judicial Division, at Ardmore.

A. B. ROFF }
vs. } Demurrer & Plea to
LOUISA BURNET, Adm'x of the Estate of } the Jurisdiction.
B. C. Burney.

Now comes the defendant, and for answer, appearing only for the purpose of controverting the jurisdiction of this court, says that the plaintiff cannot recover in this cause because she says that said complaint shows that said B. C. Burney was during his lifetime a member of the Chickasaw tribe of Indians, and that this defendant is a member of said Chickasaw tribe of Indians and is administering upon said estate in the tribal courts of said Chickasaw nation, and that the plaintiff is a member of said Chickasaw tribe of Indians by marriage, and does not show that plaintiff has ever made an effort to have the tribal courts of said Chickasaw nation entertain this suit, upon which she prays the judgment of the court.

JOHNSON, CRUCE & CRUCE,
CAMPBELL & WEST,
Attorneys for Defendant.

3rd. That afterwards, to wit, on the 21st day of November, 1894, at said term of court, before the Honorable Chas. B. Stuart, judge thereof, the above cause came on to be heard upon the said complaint and demurrer and plea to the jurisdiction. Thereupon the parties, by their respective attorneys, appeared, and upon the hearing of said demurrer and plea to the jurisdiction the court rendered the following judgment, as follows :

10 A. B. ROFF, Plaintiff, }
vs. } No. 1408.
Mrs. LOUISA BURNET, Adm'x, Defendant. }

This day coming on to be heard the defendant's demurrer to the plaintiff's complaint and the same being considered by the court, the court is of the opinion that the same should be sustained, and the

plaintiff declining to amend, it is therefore ordered, adjudged, and decreed by the court that the complaint in this case fails to show that the court has jurisdiction to try and determine this cause, and it is ordered that this cause be dismissed for want of jurisdiction, and, the plaintiff having excepted, it is ordered that the plaintiff have sixty days to perfect his bill of exceptions and prepare his appeal, and that the supersedeas bond be fixed at fifteen hundred dollars.

4th. That afterwards, to wit, on the 21st day of November, 1894, and before the adjournment of said October term of court, upon motion of plaintiff made in open court, he was allowed sixty days after the adjournment of said term of court to prepare and file his bill of exceptions.

5th. And be it further remembered that the plaintiff in open court excepted to the ruling of the court sustaining said demurrer and plea to the jurisdiction of the court and dismissing this cause from the docket of said court, and requested that said jurisdictional question and so much of the record as is necessary be certified to the Supreme Court of the United States for its decision, and now here tenders his bill of exceptions containing all the record necessary to advise the Supreme Court of the jurisdictional question involved herein, and prays that the same be approved, signed, ordered filed and made a part of the record herein, which is, on the 9th day of January, A. D. 1895, at —, in the Indian Territory, accordingly so done.

CHAS. B. STUART,

Judge of the U. S. Court in the Indian Territory.

I hereby agree that the foregoing is a true & correct bill of exceptions.

This the 7th day of Jan'y, 1895.

ROBT H. WEST,
Attorney for Defendant.

The foregoing is endorsed as follows: No. 1408. A. B. Roff *vs.* Louisa Burney, adm'x. Bill of exceptions. Filed Jan. 11, 1895. Joseph W. Phillips, clerk.

Petition for Writ of Error.

In the United States Court in the Indian Territory, Third Judicial Division, at Ardmore.

A. B. ROFF, Plaintiff,

vs.

LOUISA BURNET, as Administratrix of B. C. Burney, Deceased, }
Defendant.

Petition for writ of error.

To the honorable Supreme Court of the United States and to the Honorable Chas. B. Stuart, judge of the United States court

12 in the Indian Territory:

The plaintiff, A. B. Roff, in the above entitled and numbered cause, complaining of the defendant, Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, respectfully alleges that in the record and proceedings of the United States court in the Indian Territory, third judicial division, at Ardmore, in the above numbered and entitled cause, as well as in the final judgment therein rendered, there are manifest errors.

Wherefore your petitioner, A. B. Roff, prays that a writ of error issue for the removal of said cause in the Supreme Court of the United States for review and revision, and that said judgment be reversed.

Your petitioner further represents that the only question which he desires to review is the question of the jurisdiction of the said United States court over the persons of the said plaintiff and defendant, which has been adversely decided against the plaintiff, A. B. Roff, as will appear by the final judgment of said court and by the assignments of error filed herein.

C. L. HERBERT,
Attorney for A. B. Roff, Plaintiff.

The foregoing is endorsed as follows: No. 1408. A. B. Roff *vs.* Louisa Burney, adm'x. Petition for writ of error. Filed Jan. 7, 1895. Joseph W. Phillips, clerk.

13 In the United States Court in the Indian Territory, Third Judicial Division, at Ardmore.

A. B. ROFF, Plaintiff,

vs.

LOUISA BURNET, as Adm'x of the Estate of B. C. Burney, Deceased, }
Defendant. } Assignments of Error.

Now comes the plaintiff, A. B. Roff, and respectfully says that there are the following errors in the proceedings of this cause:

First. The plaintiff in his complaint having alleged that he was

a natural-born citizen of the United States and had never renounced his allegiance to said Government or taken the oath of allegiance to any foreign government of any kind whatsoever, the trial court erred in sustaining defendant's plea to the jurisdiction of the court and in dismissing this cause on the ground that the complaint further alleged that plaintiff was also a member of the tribe of Chickasaw Indians by intermarriage and the defendant a member of such tribe by blood.

Second. The complaint having alleged that the tribal courts of the Chickasaw nation and the legislature of said nation, by act passed, repudiated and disclaimed the citizenship of A. B. Roff, the court erred in holding it had no jurisdiction of the controversy between plaintiff and defendant, because the complaint further alleged that plaintiff and defendant were members of the same tribe of Indians.

C. L. HERBERT,
Attorney for A. B. Roff, Plaintiff.

14 The foregoing is endorsed as follows: No. 1408. A. B. Roff *vs.* Louisa Burney, adm'x. Assignments of error. Filed Jan. 7, 1895. Joseph W. Phillips, clerk.

Copy of Writ of Error.

UNITED STATES OF AMERICA, 88:

The President of the United States of America to the honorable judge of the United States court in the Indian Territory, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which was in the United States court, before you, at the October term, 1894, thereof, between A. B. Roff, as plaintiff, and Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, in cause number 1408, pending in said court, entitled A. B. Roff, plaintiff, *vs.* Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, defendant, a manifest error hath happened, to the great damage of the said A. B. Roff, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid at the city of Washington, in the District

15 of Columbia, and filed in the office of the clerk of the Supreme Court of the United States, on or before the — day of —, 1895, to the end that, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right

and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 9th day of January, in the year of our Lord one thousand eight hundred and ninety-five.

Issued at office, in the town of Ardmore, Indian Territory, with the seal of the clerk of the United States court in the Indian Territory, third judicial division, at Ardmore, and dated as aforesaid.

JOSEPH W. PHILLIPS,

Clerk of United States Court in the Indian Territory.

CHAS. B. STUART,

Judge of the United States Court for the Indian Territory.

The foregoing is endorsed as follows: No. 1408. A. B. Roff, plaintiff in error, *vs.* Louisa Burney, adm'x, defendant in error. Copy writ of error. Filed Jan. 11, 1895. Joseph W. Phillips, clerk.

Citation in Error.

UNITED STATES OF AMERICA:

To Louisa Burney, as administratrix of B. C. Burney, deceased,
Greeting:

You are hereby cited and admonished to be and appear in
16 the Supreme Court of the United States, at Washington,
within thirty days from and after the day this citation bears
date, pursuant to a writ of error filed in the clerk's office of the
United States court in the Indian Territory, third judicial division,
at Ardmore, wherein A. B. Roff is plaintiff in error and you are
defendant in error, to show cause, if any there be, why the judg-
ment rendered against the said A. B. Roff, plaintiff in error, as in
said writ of error mentioned, should not be corrected and why
speedy justice should not be done the parties in that behalf.

Witness the Honorable Chas. B. Stuart, judge of the United States
court in the Indian Territory, this 9th day of January, in the year
of our Lord one thousand eight hundred and ninety-five.

CHAS. B. STUART,

Judge of the United States Court in the Indian Territory.

I hereby accept full and complete service and notice of the fore-
going citation in error this January 11th, 1895.

ROBT H. WEST,

Attorney for Defendant in Error, Louisa Burney, Adm'x.

The foregoing is endorsed as follows: No. 1408. A. B. Roff,
plaintiff in error, *vs.* Louisa Burney, defendant in error. Citation
in error. Filed Jan. 11, 1895. Joseph W. Phillips, clerk.

Know all men by these presents that we, A. B. Roff and — — —, are held and firmly bound unto Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, in the full and just sum of fifteen hundred dollars, to be paid to the said Louisa Burney, as such administratrix, her heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this the 7th day of January, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas lately, at the October term, 1894, of the United States court in the Indian Territory, third judicial division, at Ardmore, in a suit depending in said court between A. B. Roff, plaintiff, and Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, defendant, judgment final was rendered against the said A. B. Roff, and the said A. B. Roff has obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Louisa Burney, as administratrix as aforesaid, citing and admonishing her to be and appear in the Supreme Court of the United States, at Washington, thirty days from and after the date of said citation:

Now, the condition of the above obligation is such that if 18 the said A. B. Roff shall prosecute said writ of error to effect and answer all damages and costs if he fail to make his plea, then the above obligation to be void; otherwise to remain in full force and virtue.

Witness our hands this 7th day of January, 1895.

A. B. ROFF.
B. F. FRENSLEY.
ROBT F. SCIVALLY.
ROBT M. RINER.

Approved by—

CHAS. B. STUART,
Judge United States Court
in the Indian Territory.

I hereby certify that in my opinion B. F. Frensley, Rob't F. Scivally, and Robert M. Riner are solvent and worth, above all debts and exemptions, many times more than amount of above-mentioned bond, & if presented to me for approval I would approve the same.

Witness my hand this the 7th day of January, A. D. 1895.

J. W. PHILLIPS, Clerk,
By F. J. PEARCE, D. C.

The foregoing is endorsed as follows: No. 1408. A. B. Roff vs. Louisa Burney, adm'x. Supersedeas bond. Filed Jan. 11, 1895. Joseph W. Phillips, clerk.

19 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable judge of the United States court in the Indian Territory, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which was in the United States court, before you, at the October term, 1894, thereof, between A. B. Roff, as plaintiff, and Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, as defendant, in cause number 1408, pending in said court, entitled A. B. Roff, plaintiff, *vs.* Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, defendant, a manifest error hath happened, to the great damage of the said A. B. Roff, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid at the city of Washington, in the District of Columbia, and filed in the office of the clerk of the Supreme Court of the United States on or before the — day of —, 1895, to the end that, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

20 Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 9th day of January, in the year of our Lord one thousand eight hundred and ninety-five.

Issued at office, in the town of Ardmore, Indian Territory, with the seal of the clerk of the United States court in the Indian Territory, third judicial division, at Ardmore, and dated as aforesaid.

JOSEPH W. PHILLIPS,

Clerk of the United States Court in the Indian Territory.

CHAS. B. STUART,

Judge of the United States Court for the Indian Territory.

21 [Endorsed:] No. 1408. A. B. Roff, plaintiff in error, *vs.* Louisa Burney, adm'x, defendant in error. Original writ of error. Filed Jan. 11, 1895. Joseph W. Phillips, clerk.

I hereby certify that a true, correct, and literal copy of the foregoing writ of error was on this the 11th day of January, A. D. 1895, lodged and filed with the clerk of the United States court in the Indian Territory, 3d judicial division, at Ardmore, and that the same is now on file among the papers of said cause No. 1408, A. B. Roff *vs.* Louisa Burney, adm'x.

Witness my hand and seal of office, at office, in town of Ardmore, this the 11th day of January, A. D. 1895.

[Seal United States Court, Indian Territory, Third Division.]

JOSEPH W. PHILLIPS,
*Clerk U. S. Court, Indian Territory,
 3d Judicial Division, at Ardmore.*

22 United States of America to Louisa Burney, as administratrix of B. C. Burney, deceased, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at Washington, within thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the United States court in the Indian Territory, third judicial division, at Ardmore, wherein A. B. Roff is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said A. B. Roff, plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Chas. B. Stuart, judge of the United States court in the Indian Territory, this 9th day of January, in the year of our Lord one thousand eight hundred and ninety-five.

CHAS. B. STUART,
Judge of the United States Court in the Indian Territory.

I hereby accept full and complete service and notice of the foregoing citation in error this January 11th, 1895.

ROBT H. WEST,
Atty for Def't in Error, Louisa Burney, Adm'x.

23 [Endorsed:] No. 1408. A. B. Roff, plaintiff in error, vs. Louisa Burney, defendant in error. Citation in error. Filed Jan. 11, 1895. Joseph W. Phillips, clerk.

24 *Clerk's Certificate.*

INDIAN TERRITORY, }
 Third Judicial Division. }

I, Joseph W. Phillips, clerk of the United States court in the Indian Territory, third judicial division, do hereby certify that the foregoing is a full, true, and correct transcript of the record and are proceedings had in cause #1408, wherein A. B. Roff is plaintiff and Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, is defendant, relative to the jurisdictional question involved lately pending in the United States court at Ardmore; and I do further certify that the original writ of and citation in error are also included in this transcript.

In testimony whereof I have hereunto affixed the seal of said court, at Ardmore, Indian Territory, and signature of the clerk thereof.

This the 12th day of January, A. D. 1895.

[Seal United States Court, Indian Territory, Third Division.]

J. W. PHILLIPS,

*Clerk of the U. S. Court in the Indian Territory,
Third Judicial Division,
By F. J. PEARCE, Deputy.*

Endorsed on cover: Case No. 15,794. Indian Territory U. S. court. Term No., 910. A. B. Roff, plaintiff in error, *vs.* Louisa Burney, as administratrix of B. C. Burney, deceased. Filed February 15, 1895.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 34.

A. B. ROFF, PLAINTIFF IN ERROR,

vs.

LOUISA BURNET, AS ADMX, &c.

WRIT OF CERTIORARI AND RETURN.

THE UNITED STATES OF AMERICA, *ss*:

[Seal of the Supreme Court of the United States.]

The President of the United States to the judges of the United States court for the Indian Territory, Greeting:

Whereas in a certain suit in said United States court, between A. B. Roff, plaintiff, and Louisa Burney, as administratrix of B. C. Burney, deceased, defendant, which suit was removed to the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit—

That Exhibits "A" and "B," attached to the amended complaint in the court below, are omitted from the transcript of the record:

You therefore are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of October, A. D. 1897.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] Filed Nov. 2, 1897, 2 p. m. C. M. Campbell, clerk.

"EXHIBIT A."

An act granting citizenship to the heirs of Wm. H. Bourland.

SECTION 1. Be it enacted by the legislature of the Chickasaw nation, That the right of citizenship is hereby granted to the follow-

ing-named children and nephews of Wm. H. Bourland: Amanda, Matilda, Gordentia and Run Hannah.

Approved October 7, 1876.

B. F. OVERTON, *Governor.*

“EXHIBIT B.”

An act repealing an act granting citizenship to the heirs of W. H. Bourland.

SECTION 1. Be it enacted by the legislature of the Chickasaw nation, That the rights of citizenship granted to the following-named children and nephews of W. H. Bourland, Amanda, Matilda, Gorduria and Run Hannah, approved October 7, 1876, the same is hereby repealed and annulled.

SECTION 2. Be it further enacted, That the governor is hereby directed and required to remove said parties and their descendants beyond the limits of this nation, and that this act take effect from and after its passage.

Passed the senate, October 11, 1883.

JONAS WOLF,
President of the Senate.

Attest: JO. BROWN,
Secretary Senate.

Passed the house of representatives October 13, 1883.

L. FRAZIER, *Speaker.*

Attest: A. L. MCKINNEY, *Clerk.*

The above act became a law by reason of limitation.

THOS. W. JOHNSON,
National Secretary, C. N.

We, the undersigned attorneys, hereby agree that the foregoing are true and correct copies of the exhibits referred to in the first amended complaint of the plaintiff in cause No. 1408, A. B. Roff, plaintiff, *vs.* Mrs. Louisa Burney, administratrix of the estate of B. C. Burney, deceased, defendant, recently pending in the United States court, Indian Territory, third judicial division (now southern district), at Ardmore, which said exhibits were omitted from the record of said cause filed in the Supreme Court of the United States in cause No. 910, entitled A. B. Roff, plaintiff in error, *vs.* Louisa Burney, as administratrix of B. C. Burney, deceased, defendant in error, now pending in said last-named court on writ of error, and agree that said foregoing copies may be filed and by said court may be considered as a part of the record in said cause.

C. L. HERBERT,
Attorney for Plaintiff in Error.

ROBT H. WEST,
POTTERF & BOWMAN,
Attorneys for Defendant in Error.

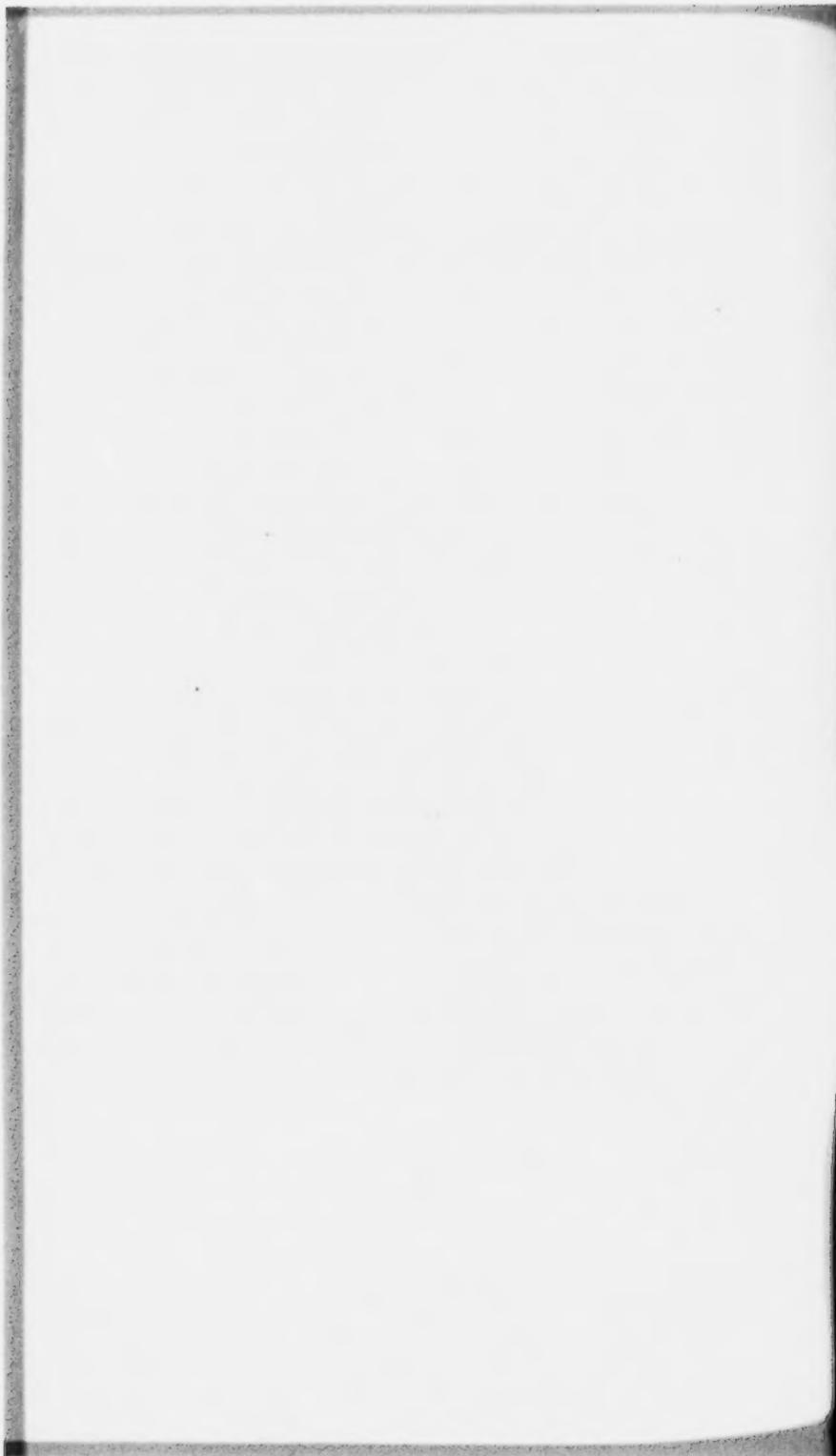
I, Charles M. Campbell, clerk of the United States court for the southern district of the Indian Territory, do hereby certify that I have searched for and have not been able to find Exhibits "A" and "B" referred to in the first amended complaint of the plaintiff in cause No. 1408, entitled A. B. Roff, plaintiff, vs. Mrs. Louisa Burney, administratrix, defendant, lately pending in the United States court in the Indian Territory, third judicial division (now southern district), at Ardmore; and I further certify that the signature of C. L. Herbert, for plaintiff in error, and R. H. West and Potter & Bowman, for defendant in error, to the foregoing agreement are genuine, and that C. L. Herbert and Robert H. West are attorneys of record in the trial court for plaintiff and defendant respectively.

In testimony whereof witness my hand and the seal of said court this 2nd day of November, 1897.

{ Seal United States Court in the Indian Territory,
Southern District, Ardmore. }

C. M. CAMPBELL,
*Clerk U. S. Court for the Southern District of the
Indian Territory,*
By — — —, Deputy.

[Endorsed:] Case No. 15,794. Supreme Court U. S., October term, 1897. Term No., 34. A. B. Roff *et al.*, plff- in error, vs. Louisa Burney *et al.* Writ of certiorari and return. Office Supreme Court U. S. Filed Nov. 6, 1897. James H. McKenney, clerk.



No. 34.

SEP 20 1897
JAMES H. MCKENNEY
CLERK

Brief of Herbert for P. E.

Filed Sept. 20, 1897.

Supreme Court of the United States.

October Term, A. D., 1896.

NO. ~~34~~ 34.

A. B. ROFF, Plaintiff in Error.

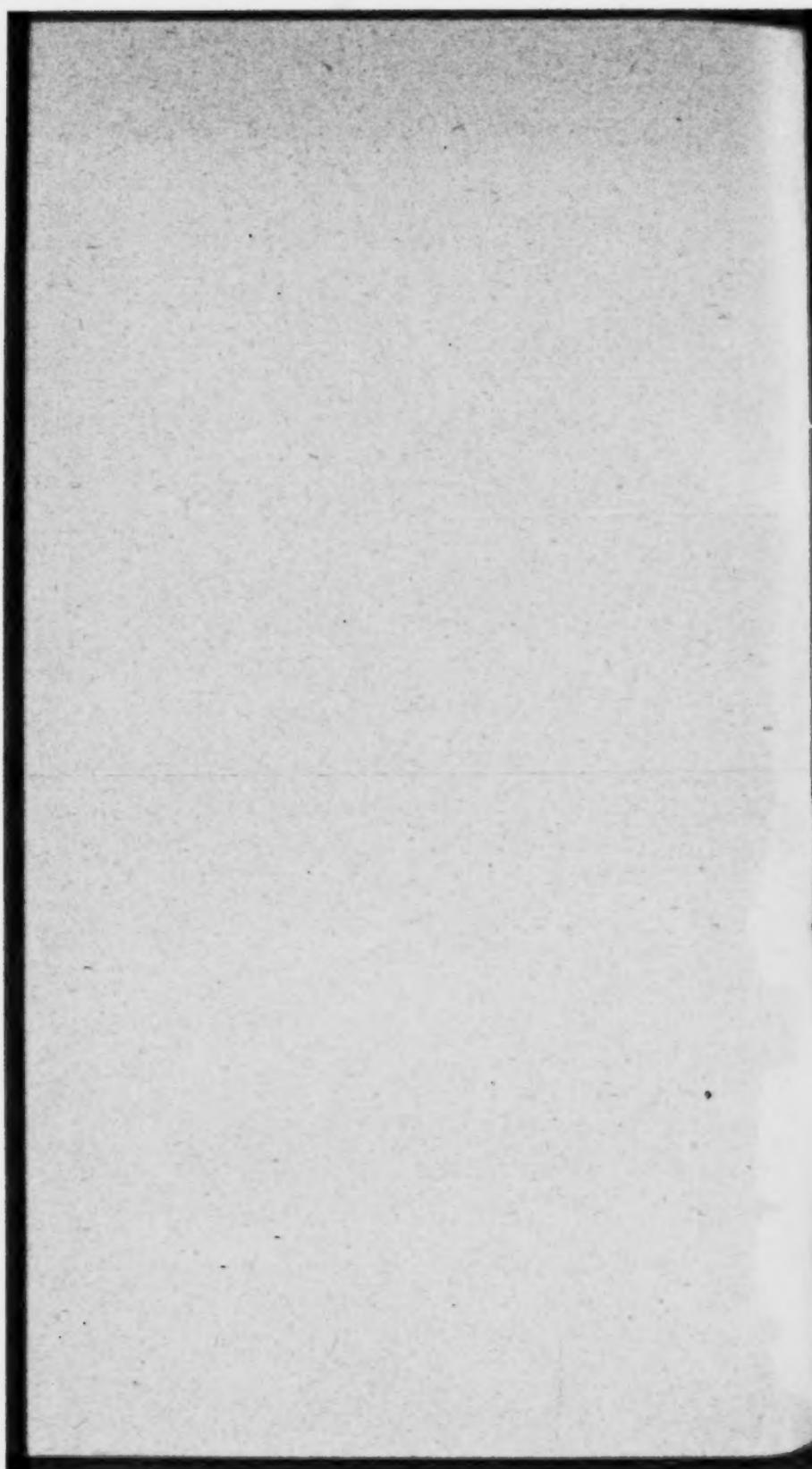
vs.

LOUISA BURNEY, as Administratrix of B. C. Bur-
ney, deceased, Defendant in Error.

IN ERROR TO THE UNITED STATES
COURT IN THE INDIAN TERRITORY.

BRIEF OF PLAINTIFF IN ERROR.

C. L. HERBERT,
Counsel for A. B. Roff, Plaintiff in Error.



Supreme Court of the United States.

October Term, A. D., 1896.

NO. 910.

A. B. ROFF, Plaintiff in Error.

vs.

LOUISA BURNEY, as Administratrix of B. C. Burney, deceased, Defendant in Error.

IN ERROR TO THE UNITED STATES
COURT IN THE INDIAN TERRITORY.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT OF THE CASE:

August 28, 1893, plaintiff in error, hereinafter called plaintiff, filed in the U. S. court in the Indian Territory, Third Judicial Division, his com-

plaint against defendant in error, Louisa Burney, as administratrix of the estate of B. C. Burney, deceased. Nov. 6, 1892, plaintiff filed in said court, his amended complaint, alleging, in substance, "That both plaintiff and defendant reside in the Chickasaw Nation, Indian Territory; that plaintiff, A. B. Roff, is a natural born citizen of the United States of America; that he has never in any way renounced his allegiance to said United States government, and he has never taken the oath of allegiance to any foreign government of any kind whatsoever, of any foreign king, potentate or ruler of any such government; that plaintiff has been, and is yet, a citizen of the United States. As aforesaid, plaintiff states that in the year 1857, the legislature of the Chickasaw Nation passed an act wherein and by reason whereof, the heirs and nephew of Wm. H. Bourland, to-wit:

Amanda Bourland, Matilda Bourland, Gordentia Bourland and Run Hannah Bourland, were adopted as citizens of the Chickasaw Nation.

Now, this plaintiff states and charges the truth to be that on the 7th day of October, 1896, the legislature of the Chickasaw Nation passed an act wherein and by reason and virtue whereof, the children and nephew of Wm. H. Bourland, to-wit:

Amanda Bourland, Matilda Bourland, Gordentia Bourland and Run Hannah Bourland, were adopted as citizens of said Chickasaw Nation and members and citizens of the tribe of Chickasaw In-

dians, a copy of said act of said Chickasaw legislature is hereto annexed, marked "Exhibit A," and made a part thereof; that said act was but a confirmation of said act of 1857, aforesaid. Now, plaintiff states that said children and nephew of said Wm. H. Bourland, aforesaid, by reason and by virtue of said act of said Chickasaw legislature become and were, and ever since said year, 1857, have been members of the tribe of Chickasaw Indians and citizens of said Chickasaw Nation and as such were, and ever since said date have been entitled to all the rights, immunities and privileges of a Chickasaw Indian by blood guaranteed unto him by the constitution and laws of the United States, the constitution and laws of the Chickasaw Nation, and the treaties between the government of the United States and said tribe of Chickasaw Indians and the tribe of Choctaw Indians.

Plaintiff states that on or about the 11th day of November, 1867, that according to the laws, customs and usages of said tribe of Chickasaw Indians, and of said Chickasaw government, he was duly and legally married to the said Matilda Bourland (adopted by said act of said legislature as a citizen of said Nation, and member of said tribe, as aforesaid,) and that by reason of virtue of said inter-marriage with said Matilda Bourland, under the constitution and laws of the United States, the constitution and laws of said Chickasaw Nation, and the treaties between the United States government and the Chickasaw and Choctaw tribes of Indians, he became and was, and

ever since said date has been a member of the tribe of Chickasaw Indians and a citizen of the Chickasaw government, and entitled to all the rights, privileges and immunities of a Chickasaw Indian by blood; but plaintiff alleges that, contrary to the constitution and laws of the United States, and contrary to the constitution and laws of said Chickasaw Nation, and contrary to the treaties between the United States and the Chickasaw and Choctaw tribes of Indians, on the 13th day of October, 1883, said Chickasaw legislature passed another and different act wherein and by reason and by virtue whereof it is attempted to repeal said act of said legislature of October 7, 1876, and said act of 1857 and to disclaim, renounce and repudiate the citizenship of said Bourland heirs and of this plaintiff, acquired thereunder, in the manner aforesaid, and to deny this plaintiff any right as a member of said tribe of Chickasaw Indians, or a citizen of said Chickasaw Nation. A copy of said last named act of said Chickasaw legislature is hereto annexed marked "Exhibit A" and made a part hereof.

Now, this plaintiff states and charges the truth to be that ever since the passage of said last named act the said Chickasaw government, and all the courts and officials thereof, have refused to recognize this plaintiff as a member of said tribe of said Chickasaw Indians, or as a citizen of said Chickasaw government, and, that, hitherto, since said date all the courts of the Chickasaw government have refused to entertain jurisdiction of any

controversy between this plaintiff and a member of said tribe of Chicksaw Indians, and that they do yet refuse to entertain jurisdiction of such controversies. [R. 1 and 2.]

Alleging, further, that the defendant, Louisa Burney, (administratrix of her deceased husband) is a member of the tribe of Chickasaw Indians by blood. And, also, declaring upon a debt owing by said estate to the plaintiff, which had been presented to and disallowed by defendant, as such administratrix. [R. 2 and 3.]

To this complaint the defendant interposed the following "demur and plea to the jurisdiction," to-wit:

"Now comes the defendant, and for answer, appearing only for the purpose of controverting the jurisdiction of this court, and says that the plaintiff can not recover in this cause because she says that said complaint shows that said B. C. Burney was, during his life time, a member of the Chickasaw tribe of Indians, and that this defendant is a member of said Chickasaw tribe of Indians, and is administering upon said estate in the tribal courts of said Chickasaw Nation, and that the plaintiff is a member of said Chickasaw tribe of Indians, by marriage, and does not show that plaintiff has ever made an effort to have the tribal courts of the Chickasaw Nation entertain this suit, upon which she prays the judgment of the court." [R. 5.]

On Nov. 21, 1894, this demur and plea to the jurisdiction was presented to, and was

sustained by the trial court, who rendered judgement in favor of defendant dismissing the cause for want of jurisdiction; and as plaintiff excused to the court's decision, he was allowed sixty days to prepare his bill of exceptions. (R. 6.) The bill of exception was signed and approved January 9, 1895, and was filed with clerk of the trial court January 11, 1895. (R. 6.) The bill of exceptions, which contains so much of the record as is necessary to advise this court of the jurisdictional question involved, is, in writing, by counsel for the defendant, admitted to be correct. (R. 6.)

Petition for writ of error was filed January 7, 1895. (R. 7.) Assignments of error were filed same day. (R. 7 and 8.) Original writ of error issued January 9, 1895, and a true copy of same was lodged with clerk of the trial court. (R. 9 and 11.)

Citation in error issued January 9, 1895, the service of which was accepted by the defendant in error. (R. 9.) Superaedea bond was approved by the trial judge and filed with clerk January 7, 1895, (R. 10.) and this cause is brought to this court for revision and review solely on the aforesaid jurisdiction question. The following errors are assigned to the decision of the trial court in sustaining the demurer to, and in dismissing the complaint of the plaintiff:

1. "The plaintiff, in his complaint, having alleged that he was a native born citizen of the United States, and had never renounced his allegiance to said government, or taken the oath of

allegiance to any foreign government of any kind whatsoever, the trial court erred in sustaining the defendant's plea of the jurisdiction of the court and dismissing this cause on the ground that the complaint further alleged that plaintiff was also a member of the tribe of Chickasaw Indians by inter-marriage, and the defendant a member of such tribe by blood."

2. "The complaint having alleged that the tribal courts of the Chickasaw Nation and the legislature of said nation, by act passed, repudiated and disclaimed the citizenship of A. B. Roff, the court erred in holding that it had no jurisdiction of the controversy between plaintiff and defendant, because the complaint further alleges that plaintiff and defendant were members of the same tribe of Indians." (R. 7 and 8.)

These two assignments of error will be considered together. The complaint shows beyond question that A. B. Roff is a natural born citizen of the United States and is yet a citizen of the United States because he has never renounced his allegiance to said government or taken an oath of allegiance to any other government and that he resides within its territorial limits. [R. 1.] It also, shows by virtue of his marriage to Matilda Bourland, a member of the tribe of Chickasaw Indians, November 11, 1867, said Roff became a member of the tribe of Chickasaw Indians. [R. 2.] That the defendant is a member, by blood, of the said tribe of Indians. [R. 3.] It further shows affirmatively that the

the courts of the Chickasaw Nation repudiate Roff's Indian citizenship, and deny him the right to sue members of the tribe of Chickasaw Indians and by legislation said Chickasaw government have attempted to repudiate his Chickasaw citizenship. Article 38 of the treaty of 1866 between the Choctaw and Chickasaw Indians and the United States, reads:

"Every white person, who, having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw Nation, or who has been adopted by the legislative authorities, is to be deemed as a member of said Nation * * * * in all respects as though he was a native Choctaw or Chickasaw." [See Vol. 14 U. S. Statutes at large, p. 779.] It will be seen by this article of the treaty there are three kinds or classes of Choctaw and Chickasaw Indians recognized, viz: By blood, by legislative adoption, and by inter-marriage. Under the allegations in the complaint, Matilda Bourland, (to whom Roff was married,) was a Chickasaw by legislative adoption, and Roff a Chickasaw by inter-marriage. March 1, 1889, congress passed an act "to establish a United States court in the Indian Territory, and for other purposes." [See, Vol. 25 U. S. statute at large p. 783.] Sect. 6 of that act, [p. 784,] reads:

"That the court hereby established shall have jurisdiction in all civil cases between citizens of the United States who are residents of the Indian Territory, or between citizens of the United States, or of any state or territory therein, and

any citizen of or person or persons residing or found in the Indian Territory, and when the value of the thing in controversy, or damages or money claimed shall amount to one hundred dollars or more: Provided, that nothing herein contained shall be so construed as to give the court jurisdiction over controversies between persons of Indian blood only." Under this act there can be no question but that the United States court in the Indian Territory had jurisdiction of the controversy between A. B. Roff, a Chickasaw by marriage and Mrs. Louisa Burney, a Chickasaw by blood; but it is contended that this act was so amended by act of May 2, 1890, [26 U. S. stat. at large, p. 81] as to deprive said court of jurisdiction of said controversy. Section 31 of said last named act [p. 94] reads:

"That certain general laws of the State of Arkansas, in force at the close of the session of the general assembly of that State, of eighteen hundred and eighty-three, as published in eighteen hundred and eighty-four in the volume known as Mansfield's Digest of the Statutes of Arkansas, which are not locally inapplicable or in conflict with this act or any law of Congress, relating to the subjects specially mentioned in this section, are hereby extended over and put in force in the Indian Territory until congress shall otherwise provide, that is to say, the provisions of the said General Statutes of Arkansas, relating to administration, chapter 1; * * * * to bills of exchange and promissory notes, chapter 14.

* * * * *

The constitution of the United States and all general laws of the United States, which prohibit crimes and misdemeanors in any place within the sole and exclusive jurisdiction of the United States, except in the district of Columbia, and all laws relating to National Banking Associations shall have the same force and effect in the Indian Territory as elsewhere in the United States; but nothing in this act shall be so construed as to deprive any of the courts of the civilized nations of exclusive jurisdiction over all cases arising wherein members of said nations, whether by treaty, blood or adoption are the sole parties."

The latter part of Section 30 of same act, [Idem. page 94,] contains this proviso, viz: "Provided, however, that the judicial tribunal of the Indian Nation, shall retain exclusive jurisdiction in all civil and criminal cases arising in the country in which members of the nation by nativity or by adoption shall be the only parties; and as to all such cases the laws of the State of Arkansas extend over and put in force in said Indian Territory by this act shall not apply." The act of 1889 above cited, conferring jurisdiction upon said United States court, as to persons, except as limited by sections 30 and 31 of the act of 1890, is still in force in the Indian Territory, and, we contend that if Roff is a member of the tribe of Chickasaw Indians by intermarriage, [and not a member thereof by treaty, blood or adoption] the limitation placed upon the act of 1889 by the act of

1890 does not deprive said United States court of jurisdiction of a controversy between himself, as an intermarried Chickasaw, and a member of said tribe by treaty, blood or adoption. To correctly determine this question it will be necessary to consider what is meant by "member of the tribe by treaty, blood or adoption." Does the member of said tribe, who acquires his membership or citizenship thereof by intermarriage come within the meaning and definition of a "member by treaty" a "member by blood" or a "member by adoption?" If yes, then under the technical construction of the act of 1890, the trial court had no jurisdiction of the controversy presented by the record; if the negative answer is given then the said United States court had jurisdiction by the express terms of the act of 1889.

What then is meant by the language, a "member by treaty?" A treaty is defined to be a "contract between two or more independent nations." [See Anderson's Dictionary of Law, page 1051, "Treaty;" Whitney vs. Robertson, 124 U. S. 194.] A treaty, "by the general law of nations, is in the nature of a contract between two nations, not a legislative act." [Anderson's Dictionary of Law, page 1051, "Treaty;" Foster vs. Neilson, 2 Pet. 314.]

We contend that a member of any of the five civilized tribes by "treaty" is of African descent, who resided in the Indian Territory, at the date of the emancipation of the slaves, and that the treaties, made by the United States with the five

civilized tribes sustain the contention. By article 3 of the treaty of 1866, between the Choctaws and Chickasaws, the United States government held back from said tribes \$300,000.00 until the "legislatures of the Choctaw and Chickasaw Nations respectively shall have made such laws, rules and regulations as may be necessary to give all persons of African descent resident in the said Nations at the treaty of Ft. Smith, and their descendants heretofore held in slavery among said Nations, all the rights, privileges and immunities, including the right of suffrage of citizens of said Nations, except in annuities &c." 14 Statutes at large 769.

When ratified by the Choctaw or Chickasaw legislature said persons of African descent became members of the tribe ratifying the same under this section of the treaty the Chickasaws never adopted their freedmen, but on May 21, 1883, the Choctaws adopted their freedmen by legislative act, 22 U. S. Statutes at Large, 68, 72, 23 U. S. Statutes at large 362, 366; Lucas vs. U. S. 163 U. S. 282, [Lawyers Co. Op. Ed., bottom page 282.] It, therefore, follows without reason that the Choctaw freedmen are members of the Choctaw tribe by "treaty."

Article 9 of the treaty of 1866 between the United States and the Cherokee Indians, (14 Stat. at large, 801,) reads: * * * "They further agree that all freedmen who have been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the

country at the commencement of the rebellion, and are now residents therein, or who may return within six months, and their descendants, shall have all the rights of native Cherokees." This section of said treaty made the Cherokee freedmen, residents of that Nation, members of the tribe of Cherokee Indians by treaty. *Alberty vs. U. S.*, 162 U. S., 1051 (Law Ed. bottom page.) By Art. 2, treaty of 1866 of United States with the Creek Indians, (14 Stat. at large, 786,) the persons of African descent are made members of the Creek tribe of Indians by treaty with all the privileges of a native Creek Indian. By article 2 of treaty of 1866, between the United States and the Seminole Indians, (14 Stat. at large 756,) persons of African descent and blood are made members of the tribe of Seminoles Indians by treaty.

By an examination of these treaties it will be seen that it was intended by the treaty makers that all persons of African descent, former slaves of the Cherokees, Creeks and Seminoles, residing in said Nations, by reason of said treaties, ipso facto become members of the tribe to which their former masters were members; and the persons of African descent, of the same status, in the Choctaw or Chickasaw Nations were to become members of said tribes when such treaty should be confirmed by the legislatures of said Nations, respectively.

Roff then was not, and is not a member of the of the Chickasaw tribe by treaty, if our conten-

tion be correct. The complaint shows he was not a member of such tribe by nativity. Then was he a member by adoption? Unquestionably a member of the tribe of Choctaw or Chickasaw Indians by adoption is he who has been "adopted by the legislative authorities" of such Nations. See article 38 treaty of 1866 of United States with Choctaws and Chickasaws. This article 38 of said treaty of 1866 clearly distinguishes the "member of said tribes by legislative adoption" from the member by inter-marriage." It was not intended by the act of Congress of 1890 to deprive the United States court in the Indian Territory of jurisdiction of a controversy between a white man, a member of the tribe by inter-marriage, and a member of said tribe by legislative adoption, treaty or nativity. Congress was then too well acquainted with the status of its own citizens residing in this territory who had married members of said tribe and thereby acquired rights of Indian citizens, and too well advised that the white inter-married members of the Chickasaw tribe had by an amendment of the Chickasaw constitution been disfranchised, and by the "powers that be" had been much and unjustly discriminated against in the tribal courts. Roff's case is a fair illustration of this doctrine. He asserts against a Chickasaw by nativity a liquidated demand but the tribal court refuses to entertain jurisdiction of his cause of action—they have deprived themselves of the jurisdiction—they rely upon their own void

legislation wherein they attempt to legislate away his vested right of Chickasaw citizenship. The United States court is then resorted to, and, by that tribunal he is told that he is a Chickasaw by inter-marriage and must not deprive the tribal courts of their jurisdiction. He pleads and is prepared to prove the tribal courts will not entertain jurisdiction of a controversy between himself and other members of the tribe; that he was born a citizen of the United States, has never renounced his allegiances thereto, and has never taken an oath of allegiance to any other government, etc., but all to no avail! He is declared to be a kind of quasi citizen of the United States, and a white Chickasaw Indian without a forum for the redress of his grievances.

The United States, as guardian of the Chickasaws, through its judicery in unmistakable terms says to him: "Although a respected citizen of the United States and a member of the Chickasaw tribe, you are, nevertheless, an outcast, a political non-entity—a man without a forum, whose civil rights by the Chickasaw Indians may be invaded with impunity.

Suppose it be held by this court that Roff is, under the allegations in the complaint, a member of the tribe of Chickasaw Indians by treaty or adoption, and that the tribal court had jurisdiction of the controversy between he and Mrs. Burney.

Can it be said that the action of the United States court in exercising jurisdiction would "de-

prive" the tribal court of its jurisdiction? That court is deprived of nothing. It simply refuses to entertain jurisdiction of the controversy, and Roff by reason of his dual citizenship resorts to the United States court to enforce the collection of his indebtedness against an Indian by blood.

By act of Congress, May 2, 1890, dual citizenship is encouraged and expressly provided for. Section 43 of that act provides, "That any member of any Indian tribe or nation residing in the Indian Territory may apply to the United States court therein to become a citizen of the United States, and such court shall have jurisdiction thereof and shall hear and determine such application as provided in the Statutes of the United States; * * * * Provided, that the Indians who became citizens of the United States under the provisions of this act do not forfeit or lose any rights or privileges they enjoy or are entitled to as members of the tribe or Nation to which they belong," 26 Statutes at Large, 99. What is the meaning of this act of congress? Is it not intended to give to the member of any of the Indian tribes, who resides in the Indian Territory, [now, and at date of the act, composed of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Nations,] a right to acquire dual citizenship by complying with the provision of that act? He is to remain a member of his tribe and yet he becomes a citizen of the United States; he forfeits no right or privilege he has as an Indian; that is to say, he has a right to vote, hold office, acquire and own

property, &c, &c, as a member of the tribe, and has the right to sue another Indian, member of same tribe, in the tribal courts for the redress of his grievances, yet, will it be seriously contended that if the tribal courts, because he is a citizen of the United States, refuse to entertain jurisdiction of a suit by him filed against another member of his tribe, that the United States court in the Indian Territory, recognizing him as a citizen of the United States, would deny him jurisdiction because forsooth he still enjoyed the rights and privileges of an Indian?

If such a construction of the act be correct, then the act of Congress is an absurdity, and tends to mislead the Indian, and will result in great devastation to his personal and property rights.

If Roff was born a citizen of the United States and, as alleged, has never renounced his allegiance thereto, and has never taken the oath of allegiance to the Chickasaw government and yet resides within the territorial limits of the general government, we submit he is still a citizen of the United States and is entitled to enjoy the dual citizenship provided for in the act without complying with the terms thereof. His residence among the Chickasaws, and his Chickasaw citizenship is not a renunciation of his citizenship as an American citizen.

In *Elk vs. Wilkins*, (112 U. S. 643,) Law. Ed. bottom page, this court held that an Indian, born a member of one of the Indian tribes, which still exists, cannot voluntarily expatriate himself

from his tribe and become a citizen of the United States without the action or assent of the United States government.

The act of Congress, above cited, in our opinion, therefore did not intend that any member of the tribe, other than Indians by birth would take the oath of allegiance to the United States government. Certainly the white man, by birth a citizen of the United States, who had never renounced his allegiance to that government, and who had never taken the oath of allegiance to any other government, a bona fide resident of the general government, was not expected to take the oath of allegiance to the U. S. government, simply because he had married, (as Roff did,) a member of the tribe of Chickasaw Indians.

In *Talbot vs. Janson*, (3 Dallas, p. 553, Law Ed. bottom page,) this court said: "We are undoubtedly to consider him a citizen of the United States. Admitting he had a right to expatriate himself, without any law prescribing the method of his doing so, we surely must have some evidence that he had done it. There is none, but that he went to the West Indies, and took an oath to the French Republic, and became a citizen there. I do not think that merely taking such an oath, and being admitted a citizen there, in itself, is evidence of a bona fide expatriation, or completely discharges the obligations he owes to his own country." Section 1992 Rev. Statutes U. S. p. 350, reads: "All persons born in the United States and not subject to any foreign power, excluding

Indians not taxed, are declared to be citizens of the United States.' If under the local laws of the Chickasaw government Roff had been required to take an oath of allegiance to that government, and renounce his allegiance to the United States government, as a condition precedent to his marriage to Matilda Bourland, and had he taken such oath, we concede he would have then forfeited his citizenship as a citizen of the United States. The complaint, however, alleges that he married according to the local laws of the Chickasaw Nation, etc., and that he has never taken such oath. We respectfully submit that if Roff was now in a foreign country and was being "unjustly deprived of his liberty" by authority of said government, that the president, when advised of the status of Roff's citizenship would promptly demand his release in accordance with Sec. 2001 of Rev. Stat. of the U. S., notwithstanding Roff had previously married one of the wards of the government and thereby acquired the rights of a Chickasaw Indian.

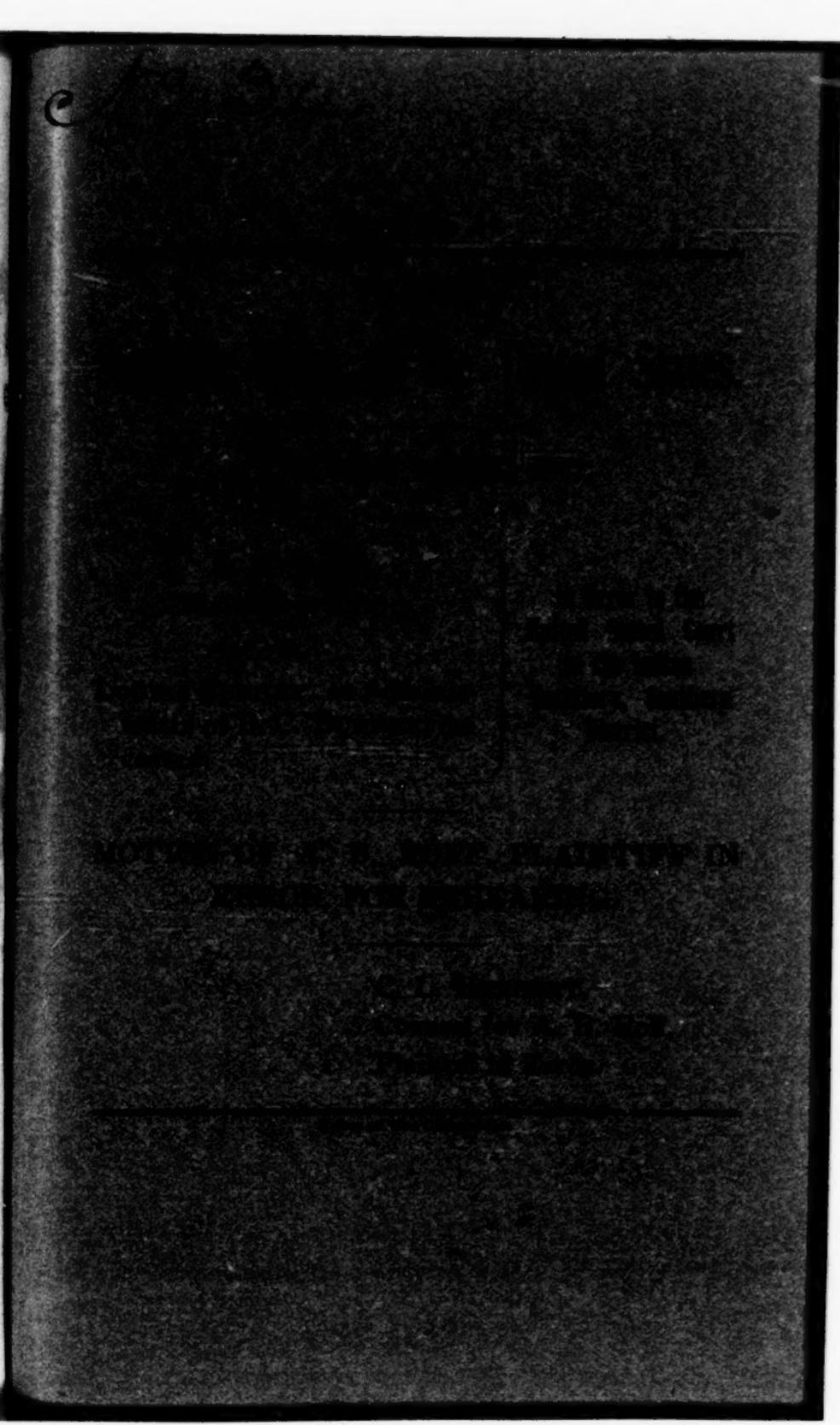
We believe the trial court had jurisdiction of the subject matter and the parties to the controversy in the case presented by the record, and that it is contrary to the spirit and intention of our American jurisprudence to deprive a citizen of the general government, male or female, of a forum in which to redress his grievances although he or she may have married a Chickasaw Indian and become a member of that tribe and for the reasons hereinbefore stated would most respect-

fully request that this case be reversed and remanded for trial anew.

Respectfully Submitted,

C. L. HERBERT,

Counsel for A. B. Roff, Plaintiff in Error.



IN THE
Supreme Court of the United States.

OCTOBER TERM, 1897.

A. B. ROFF,
Plaintiff in Error,
vs.
LOUISA BURNEY, as Administratrix of B. C. BURNEY, deceased.

} In Error to the
United States Court
in the Indian
Territory, Southern
District.

MOTION OF A. B. ROFF, PLAINTIFF IN
ERROR, FOR REHEARING.

And now comes A. B. Roff, plaintiff in error, by his counsel, C. L. Herbert, and moves this honorable court to set aside the judgment rendered and entered herein November 29, 1897, and grant

him a rehearing, and as ground of said petition he states:

First. The plaintiff in error, A. B. Roff, in his amended complaint, filed in the court below, having alleged, in substance: That in the year 1857 the legislature of the Chickasaw Nation passed an act adopting as citizens of the Chickasaw Nation the "heirs and nephews of Wm. H. Bourland, to wit: Amanda, Matilda, Gordentia and Run Hannah Bourland;" that subsequent thereto, to-wit: October 7, 1876, the same legislature passed another act adopting as citizens of the Chickasaw Nation the heirs and nephews of said Wm. H. Bourland, naming them, which last named act is alleged to be a confirmation of said act of 1857, and "that said children and nephews of said Wm. H. Bourland, aforesaid, by reason and by virtue of said act of said Chickasaw legislature, became and were and ever since said year, 1857, have been members of the tribe of Chickasaw Indians and citizens of said Chickasaw Nation, and as such, were, and ever since said date have been entitled to all the rights, immunities and privileges of a Chickasaw Indian by blood, guaranteed unto him by the constitution and laws of the United States, the constitution and laws of said Chickasaw Nation, and the TREATIES between the government of the United States and said tribe of Chickasaw Indians and the tribe of Choctaw Indians." And having further alleged in said complaint "That on or about the 13th day of November, 1867, according to the laws, customs and

usages of said tribe of Chickasaw Indians and of said Chickasaw government, "he [the plaintiff, A. B. Roff,] was duly and legally married to the said MATILDA BOURLAND [adopted by said act of said legislature as a citizen of said Nation and member of said tribe, as aforesaid,] and that by reason and virtue of said intermarriage with said Matilda Bourland, under the constitution and laws of the United States, the constitution and laws of said Chickasaw Nation, and the TREATIES between the United States government and the Chickasaw and Choctaw tribes of Indians, he became and was, and ever since said date has been a member of the tribe of Chickasaw Indians, and a citizen of said Chickasaw government, and entitled to all the rights, privileges and immunities of a Chickasaw Indian by blood." R. 1 and 2.

THIS HONORABLE COURT ERRED in holding that, under the allegations in said complaint, that the Chickasaw legislature, by act passed October 11, 1883, could and did withdraw and destroy the right of Chickasaw citizenship thus acquired by MATILDA BOURLAND and A. B. ROFF, for the reason that the right of Chickasaw citizenship is a valuable and vested right, and cannot be destroyed by legislation or judicial decree, and for the further important reason that the status of Matilda Bourland, as an adopted member of said tribe, and of A. B. Roff, as a member thereof by intermarriage, was fixed and established by ARTICLE 38 OF THE TREATY OF 1866, between the United States and the Choctaw and Chickasaw

tribes, long prior to the act of 1883 of said Chickasaw legislature, and therefore said repealing act is in direct contravention of said article of the treaty which reads:

"Every white person who, HAVING MARRIED A CHOCTAW OR CHICKASAW, resides in the Choctaw or Chickasaw Nation, OR WHO HAS BEEN ADOPTED BY THE LEGISLATIVE AUTHORITIES is to be deemed a member of said Nation in all respects as though he was a native Choctaw or Chickasaw." [14 Stat. 779.]

Second. The Court erred in holding that the right of Chickasaw citizenship is a personal and not a valuable and vested right, and therefore can be withdrawn by the Chickasaw Nation, such holding being in conflict with article 26 of said treaty of 1866 which reads: "The right here given, [referring to the right to participate in allotment of the Choctaw and Chickasaw lands], to Choctaws and Chickasaws, respectively, shall extend to ALL PERSONS WHO HAVE BECOME CITIZENS BY ADOPTION OR INTERMARRIAGE of either of said nations OR WHO MAY HEREAFTER BECOME SUCH, [14 Stat. 777,] and because to destroy by legislation, or other wise, the right of Chickasaw citizenship under the treaty, is the destruction of the valuable right to allotment."

Wherefore, because the decision of this court which in effect decitizenizes the plaintiff in error and his family, as members of the tribe of Chickasaw Indians and thereby destroys their treaty and valuable right to participate in the allotment

of the Chickasaw lands, he prays that he be permitted to file briefs of his authorities, and that his counsel be also allowed to make an oral argument in support of the forgoing petition, and upon final hearing that this honorable court set aside the judgment rendered herein November 29, 1897.

C. L. HERBERT

Counsel for A. B. Roff, Plaintiff in Error.

AGREEMENT OF COUNSEL.

We, the undersigned, attorneys for Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, defendant in error, hereby accept full and complete service and notice of the foregoing petition for rehearing, and agree that the same may be presented or submitted to the supreme Court of the United States on either printed briefs or oral argument of counsel for plaintiff in error, or both, at such time as said court is willing to hear the same. And we further agree that the Supreme Court in passing upon this petition for a rehearing may consider any and all treaties heretofore made by the United States with the Choctaw and Chickasaw tribes of Indians and the con-

stitution and laws of the Chickasaw Nation without further notice to us.

ROBT. H. WEST,

H. C. POTTERF,

W. F. BOWMAN,

Attorneys for Mrs. Louisa Burney, as administratrix of B. C. Burney, deceased, defendant in error.

CERTIFICATE OF COUNSEL.

INDIAN TERRITORY, SOUTHERN DISTRICT.

Before me, the undersigned authority, on this day personally appeared C. L. Herbert, counsel for A. B. Roff, plaintiff in error in the foregoing petition for rehearing, who, after being duly sworn, deposes and says that in his opinion said petition in point of law is well founded, and that said petition is not interposed for delay, but that justice may be done.

C. L. HERBERT.

Subscribed and sworn to before me this 17th day of December, 1897.

JESSE H. HILL,
[L. S.] Notary Public, Southern District,
Indian Territory.



No. 34.

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 34.

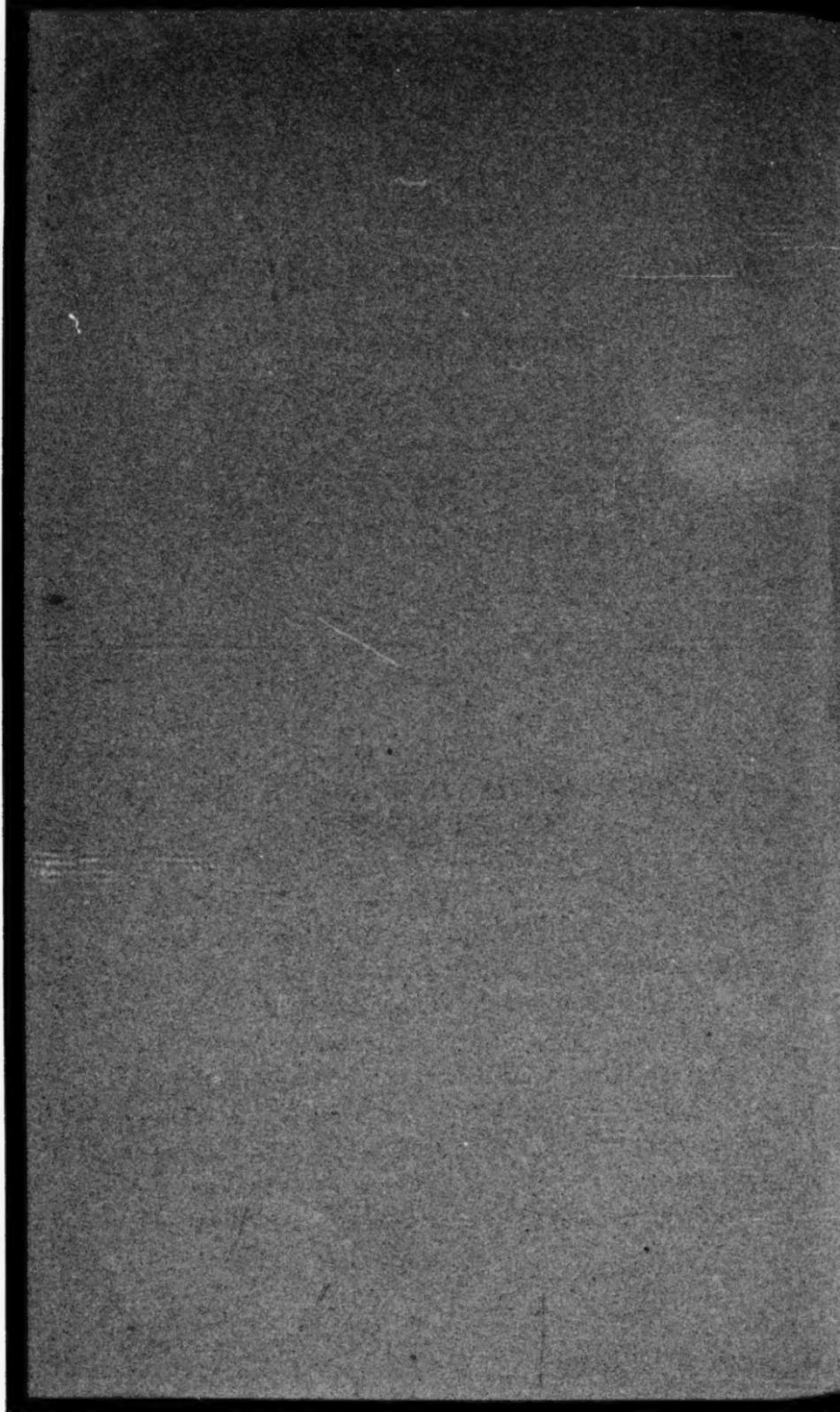
A. B. ROFF, PLAINTIFF IN ERROR,

vs.

LOUISA BURNETT, AS ADMINISTRATRIX OF R. C. BURNETT,
DECEASED,

BRIEF FOR PLAINTIFF IN ERROR ON PETITION
FOR REHEARING.

C. L. HERBERT,
Counsel for Plaintiff in Error.



IN THE
Supreme Court of the United States.
OCTOBER TERM, 1897.

No. 34.

A. B. ROFF, PLAINTIFF IN ERROR,

vs.

LOUISA BURNEY, AS ADMINISTRATRIX OF B. C. BURNEY,
DECEASED.

**BRIEF FOR PLAINTIFF IN ERROR ON PETITION
FOR REHEARING.**

On account of the construction placed upon the opinion rendered by this honorable Court in this cause, on November 29, 1897, by the attorneys representing the Chickasaw tribe of Indians in the United States courts in the Indian Territory, in answer to applications for citizenship, appealed to said courts from the decision of the Dawes commission, under act of Congress of 1896, this petition for rehearing is presented.

The attorneys for the Chickasaws contend that the opinion

rendered herein is conclusive of the question that Indian citizenship is a personal and not a valuable and vested right, and therefore the same may be withdrawn by the legislature of the tribe, regardless of the property rights of the citizen, which rights, under the treaties, are inseparable from the right of citizenship; and in support of this petition we would most respectfully call the Court's attention to the following treaties between the United States Government and the Choctaw and Chickasaw Indians, and the following portions of the Chickasaw constitution and laws touching the question involved.

The latter portion of article 1 of the treaty of 1855, between the United States and the Choctaws and Chickasaws, reads:

"And pursuant to an act of Congress approved May 28, 1830, the United States do hereby forever secure and guarantee the lands embraced within said limits to the members of the Choctaw and Chickasaw tribes, their heirs and successors, to be held in common; *so that each and every member of either tribe shall have an equal, undivided interest in the whole: Provided, however, That no part thereof shall ever be sold without the consent of both tribes; and that said land shall revert to the United States if said Indians and their heirs become extinct or abandon the same.*" (11 Stat., 612.)

Article 2 of the same treaty reads:

"A district for the Chickasaws is hereby established, bounded as follows, to wit: Beginning on the north bank of Red river, at the mouth of Island bayou, where it empties into Red river, about twenty-six miles on a straight line, below the mouth of False Wachitta; thence running a northwest-
erly course along the main channel of said bayou, to the

junction of the three prongs of said bayou, nearest the dividing ridge between Wachitta and Low Blue rivers, as laid down on Captain R. L. Hunter's map; thence northerly along the eastern prong of Island bayou to its source; thence due north to the Canadian river; thence west along the main Canadian to the ninety-eighth degree of west longitude; thence south to Red river, and thence down Red river to the beginning: *Provided, however,* If the line running due north, from the eastern source of Island bayou, to the main Canadian, shall not include Allen's or Wapanacka academy, within the Chickasaw district, then an offset shall be made from said line, so as to leave said academy two miles within the Chickasaw district north, west and south from the lines of boundary." (11 Stat., 612.)

Article 4 of the same treaty reads:

"The government and laws now in operation and not incompatible with this instrument, shall be and remain in full force and effect within the limits of the Chickasaw district, until the Chickasaws shall *adopt a constitution and enact laws, superseding, abrogating, or changing the same.* And all judicial proceedings within said district, commenced prior to the adoption of a constitution and laws by the Chickasaws, shall be conducted and determined according to existing laws." (11 Stat., 612.)

Article 7 of the same treaty reads:

"So far as may be compatible with the Constitution of the United States and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, the Choctaws and Chickasaws shall be secured in the unrestricted right of self-government, and full jurisdiction, over persons and property, within their respective limits; excepting, however, all persons with their property, who are not by birth, adoption or otherwise citizens or members of either the Choctaw or

Chickasaw tribe, and all persons, not being citizens or members of either tribe, found within their limits, shall be considered intruders, and be removed from, and kept out of the same, by the United States agent, assisted if necessary by the military, with the following exceptions, *viz*: Such individuals as are now, or may be in the employment of the Government, and their families—those peacefully traveling or temporarily sojourning in the country or trading therein, under license from the proper authority of the United States, and such as may be permitted by the Choctaws or Chickasaws, with the assent of the United States agent, to reside within their limits, without becoming citizens or members of either of said tribes."

It will be seen that under the treaty of 1855 the Chickasaws were granted the right to establish and maintain a government of their own when they should, pursuant to such treaty, adopt a constitution and enact laws for that purpose, and, pursuant to such treaty, in the year 1856 the Chickasaws did adopt a constitution, section 11 of which reads:

"SECTION 11. The legislature shall have the power, by law, to admit, or adopt any person to citizenship in this nation, except a negro or descendant of a negro: *Provided, however*, That such an admission or adoption shall not give a right further than to settle and remain in the nation and to be subject to its laws."

Pursuant to this treaty and this constitution thus adopted, on the 17th day of October, 1856, the legislature of the Chickasaw nation, at its first term, passed an act as follows:

"AN ACT granting citizenship to the heirs of Wm. H. Bourland.

"SECTION 1. *Be it enacted by the legislature of the Chickasaw nation*, That the right of citizenship is hereby granted

to the following-named children and nephews of Wm. H. Bourland: Nancy, Amanda, Matilda, Gordentia and Run Hannah. Approved October 17, 1856. C. Harris, governor."

After the treaty of 1855 and the adoption of the Chickasaw constitution of 1856, and the passage of the act of October 17, 1856, adopting the Bourland heirs as citizens of the Chickasaw nation, the United States Government, on April 28, 1866, entered into a new treaty with the Choctaw and Chickasaw Indians, article 38 of which reads:

"Every white person, who, having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw nation, or who has been adopted by the legislative authorities, is to be deemed a member of said nation, and shall be subject to the laws of the Choctaw and Chickasaw nations according to his domicile, and to prosecution and trial before their tribunals, and to punishment according to their laws in all respects as though he was a native Choctaw or Chickasaw." (14 Stat., 779.)

Article 11 of the same treaty provides for surveying and dividing the lands of the Choctaws and Chickasaws in severalty; the establishment of a land office. Article 12 provides for the mapping and surveying of the lands. Article 13 provides for notices to be published to those interested to the end that they may appear at the land office and examine such maps, etc., and articles 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25, all pertain to the allotment of the Choctaw and Chickasaw lands and the granting to each member of the tribe his interest therein in severalty; and article 26 of said treaty reads:

"The right here given to Choctaws and Chickasaws, re-

spectively, shall extend to all persons who have become citizens by adoption or intermarriage of either of said nations, or who may hereafter become such." (11 Stat., 777.)

Pursuant to the treaty of 1866, the Chickasaw nation, on August 16, 1867, adopted a constitution, section 7 of which, under the head of "General Provisions," reads:

"All persons, other than Chickasaws, who have become citizens of this nation, by marriage or adoption, and have been confirmed in all their rights as such by former conventions, and all such persons as aforesaid, who have become citizens by adoption by the legislature, or by intermarriage with the Chickasaws, since the adoption of the constitution of August 18, A. D. 1856, shall be entitled to all the rights, privileges and immunities of native-born citizens. All who may hereafter become citizens, either by marriage or adoption, shall be entitled to all the privileges of native-born citizens, without being eligible to the office of governor." (See page 15, Constitution, Laws, and Treaties of the Chickasaws, as published in 1878.)

Under the head of "Bill of Rights," in the same constitution, on page 5 of the same book, we find section 14, which reads:

"The legislature shall pass no retrospective law, or any law impairing the obligation of contracts."

On November 9, 1866, the legislature of the Chickasaw nation passed an act confirming the treaty of 1866 between the United States and the Choctaws and Chickasaws, section 1 of which reads:

"Be it enacted by the legislature of the Chickasaw nation, That whereas a treaty was concluded at Washington city on the 28th of April, 1866, by commissioners duly appointed

on the part of the Chickasaws, Choctaws, and the United States Government, which treaty was ratified with amendments by the United States Senate and confirmed by the President, the Chickasaw legislature does hereby give its consent to and confirm the said treaty and amendments made by the Senate of the United States."

On October 7, 1876, the legislature passed another act with reference to the Bourland heirs in language as follows:

"AN ACT granting citizenship to the heirs of William H. Bourland.

"SECTION 1. *Be it enacted by the legislature of the Chickasaw nation*, That the right of citizenship is hereby granted to the following-named children and nephews of William H. Bourland: Amanda, Matilda, Gordentia, and Run Hannah. Approved Oct. 7th, 1876. B. F. Overton, governor." (Constitution, Laws, and Treaties of Chickasaws, page 76, as published in 1878.)

In the complaint of plaintiff in error filed in the court below it is alleged that this act of October 7, 1876, is but a confirmation of the act of October 17, 1856, adopting the heirs of William H. Bourland as citizens of the Chickasaw nation. In effect, it is alleged that this act is a declaratory statute.

Long after the treaty of 1866 and the adoption of the Chickasaw constitution pursuant thereto, in 1867, and the passage of the declaratory statute by the Chickasaw legislature in 1876, and on October 11, 1883, the legislature of the Chickasaw nation passed an act which reads:

"SECTION 1. *Be it enacted by the legislature of the Chickasaw nation* That the right of citizenship granted to the following-named children and nephews of Wm. H. Bourland: Amanda Matilda, Gordentia and Run Hannah,

approved October 7, 1876, the same is hereby repealed and annulled.

"SECTION 2. Be it further enacted That the governor is hereby directed and required to remove said parties and their descendants beyond the limits of this nation and that this act take effect from and after its passage."

In construing the last-named act of the Chickasaw legislature, this honorable Court stated :

"Now, according to this complaint, plaintiff was a citizen of the United States. Matilda Bourland was not a Chickasaw by blood, but one upon whom the right of Chickasaw citizenship had been conferred by an act of the Chickasaw legislature.

"The citizenship which the Chickasaw legislature could confer, it could withdraw. The only restriction on the power of the Chickasaw nation to legislate in respect to its internal affairs is that such legislation shall not conflict with the Constitution or laws of the United States, and we know of no provision of such Constitution or laws which would be set at naught by the action of a political community like this in withdrawing privileges of membership in the community once conferred. The Chickasaw legislature, by the second act, whose meaning is clear, though its phraseology may not be beyond criticism, not only repealed the prior act, but canceled the rights of citizenship granted thereby, and further directed the governor to remove the parties named therein and their descendants beyond the limits of the nation. This act was not one simply taking effect as of the date of its passage, and then withdrawing rights admitted to have been theretofore legally granted, but was retroactive in its scope, and purported to annul and destroy all that has ever been admitted to be done in respect to the matter. Whether any rights of property could be taken away by such subsequent act need not be considered. It is enough to hold that all personal rights founded on the mere status thus created by the prior act fell when that status was destroyed."

If it be true that the right of Chickasaw citizenship is a personal and not a valuable and vested right, then the language of this Court, indicating that the Chickasaw legislature had the right to withdraw and abrogate Chickasaw citizenship is unquestionably true; but we must respectfully submit that under the treaty of 1866, articles 26 and 38, above referred to, and under the constitution of the Chickasaw nation of 1867, that he who acquired Chickasaw citizenship by legislative adoption or by intermarriage, not only became a member of the tribe of Chickasaw Indians, but became a tenant in common with the balance of the tribe in the lands of the Chickasaw Indians held, in common with the Choctaw Indians and situated in the Choctaw and Chickasaw nations, and that to destroy the right of citizenship is a destruction of the right to occupy and use the lands as a tenant in common with the balance of the tribe.

It is a destruction of his right to take his portion of the land in severalty when the lands are divided in accordance with the treaty of 1866, or the more recent treaty of the Choctaws and Chickasaws, entered into by their legislatures in 1897. We contend that the right of Chickasaw citizenship and the right of property and the right to allotment are inseparable rights, and that the destruction of the right of citizenship absolutely destroys the right of property, a vested right; that the two rights cannot be separately treated, and we do not understand from the opinion of this Court that it was its intention to destroy any property right of the plaintiff in error, acquired by virtue of his Chickasaw citizenship, but simply to destroy a personal right. It is true the plaintiff in error alleges in his complaint that on October 13, 1883, the Chickasaw legislature passed the act

above referred to, wherein it attempted to repeal the acts of the legislature of 1859 (1857) and October 7, 1876, and to disclaim, renounce, and repudiate the citizenship of the Bourland heirs, and of the plaintiff in error acquired thereunder, in the manner alleged in the complaint, and to deny the plaintiff any right as a member of the tribe of Chickasaw Indians or as a citizen of the Chickasaw nation, and that ever since the passage of said act the Chickasaw government, and all of the courts and officials thereof, have refused to recognize this plaintiff as a member of the tribe of Chickasaw Indians, and that ever since said date all the courts of said Chickasaw government have refused to entertain jurisdiction of any controversy between the plaintiff and a member of the tribe of Chickasaw Indians, and that they do yet refuse to entertain jurisdiction of such controversy.

It was the purpose of plaintiff in error in that complaint to allege a dual citizenship, and by showing that the Chickasaw courts were not open to him for the redress of a grievance between himself as a member of the tribe and another member of the tribe, that the United States court, under the statutes then in force, had jurisdiction of the controversy between him and the defendant in error, who is alleged to be a Chickasaw Indian by blood. This complaint further alleges that the children and nephews of said William H. Bourland, by reason and by virtue of said act of the Chickasaw legislature, became and were and ever since said year of 1857 have been members of the tribe of Chickasaw Indians and citizens of said nation, and as such were and ever since said date have been entitled to all the rights, privileges, and immunities of a Chickasaw Indian by

blood guaranteed unto him by the Constitution and laws of the United States, the constitution and laws of said Chickasaw nation, and the treaties between the Government of the United States and said tribe of Chickasaw Indians and the tribe of Choctaw Indians.

It further alleges that about the 11th day of November, 1867, according to the laws, customs, and usages of said tribe of Chickasaw Indians and of said Chickasaw government, he (A. B. Roff) was duly and legally married to the said Matilda Bourland, adopted by the said act of said legislature as a citizen of said nation and a member of said tribe as aforesaid, and that by reason and by virtue of said intermarriage with said Matilda Bourland under the Constitution and laws of the United States, the constitution of said Chickasaw nation, and the treaties between the United States Government and the Chickasaw and Choctaw tribes of Indians, he became and was and ever since said date has been a member of the tribe of Chickasaw Indians and a citizen of said Chickasaw government and entitled to all the rights, privileges, and immunities of a Chickasaw citizen by blood. (R., p. 2.)

It is true that the complaint does not contain a copy of article 26 of the treaty of 1866, or article 38 of the same treaty, or section 7 of the constitution of the Chickasaws of 1867, or the act of the legislature of the Chickasaws of November 9, 1866, ratifying and confirming the treaty of 1866; but it does allege in general terms that the right of the heirs of William H. Bourland, acquired by act of the legislature of 1857, made them members of the tribe of Chickasaw Indians, and as such they were and ever since said date have been entitled to all the rights, privileges, and

immunities of a Chickasaw Indian by blood as guaranteed unto him by the Constitution and laws of the United States, the constitution and laws of the said Chickasaw nation, and the treaties between the Government of the United States and said tribe of Chickasaw Indians and the tribe of Choctaw Indians; that plaintiff in error married Matilda Bourland in accordance with the laws, customs, and usages of said tribe of Chickasaw Indians and said Chickasaw government, and by virtue thereof, under the Constitution and laws of the United States, the constitution and laws of the said Chickasaw nation, and the treaties between the United States Government and the Chickasaw and Choctaw tribes of Indians, he became and was and ever since said date has been a member of the tribe of Chickasaw Indians and a citizen of said Chickasaw government, and entitled to all the rights, privileges, and immunities of a Chickasaw Indian by blood.

It will be seen that prior to the treaty of 1866 the status of an adopted Chickasaw Indian and one who acquires his citizenship by intermarriage with a member of the tribe are entirely different to the status of a Chickasaw Indian since the treaty of 1866. The constitution of the Chickasaws of 1856, section 11 of which is quoted above, confers upon the adopted Chickasaw a right only to reside in the Chickasaw nation; but when the Government of the United States treated with the Chickasaws and Choctaws in 1866 they required of them an express stipulation, as contained in article 38 of said treaty, that the white person who has married into the tribe and resides in the Choctaw or Chickasaw nation, or who has been adopted by the legislative authorities, is to be deemed a member of said nation in all

respects as though he was a native Choctaw or Chickasaw, and in article 26 of the same treaty it required these tribes of Indians by express stipulation to give to the intermarried Chickasaw or Choctaw, or to the adopted Chickasaw or Choctaw, the same right of allotment as granted to the native Choctaw or Chickasaw, and we take it that the right thus granted to the intermarried or adopted citizen by the treaty is a valuable and vested right, and after it has once attached it cannot be divested by legislation or judicial decree. It is not simply a personal right to which there is no value attached, but it is a right upon which, or by virtue of which, the citizen acquires a vested right in property as a tenant in common with the balance of the tribe, and the vested right to take his portion of the land in severalty when such lands are divided among the members of his tribe, and on account of the treatment of the Indian tribes in refusing to recognize the treatatory and vested rights of the intermarried and adopted Indian, the Congress of the United States provided by an act passed in 1896 (see—Stat., page —) that the commissioners of the United States to the five civilized tribes of Indians, known as the Dawes commission, "is further authorized and directed to proceed at once to hear and determine the application of all persons who may apply to them for citizenship in any of said nations, and after such hearing they shall determine the right of such applicant to be admitted and enrolled;

Provided, however, That such application shall be made to such commissioners within three months after the passage of this act, the said commission shall decide all such applications within 90 days after the same shall be made. That in determining all such applications

said commission shall respect all the laws of the several nations or tribes, not inconsistent with the laws of the United States, and all treaties with either of said nations or tribes, and shall give due force and effect to the rules, usages and customs of each of said nations or tribes; *and provided further* That the rolls of citizenship of the several tribes as now existing are hereby confirmed, and every person who shall claim to be added to said rolls as a citizen of either of said tribes and whose right thereto has either been denied or not acted upon, or that citizens, who may within three months from and after the passage of this act, desire such citizenship, may apply to the legally constituted court or committee designated by the several tribes for such citizenship, and such court or committee shall determine such application within thirty days after the application thereof."

"In the performance of such duties said commission shall have power and authority to administer oaths, to issue processes for and compel the attendance of witnesses, and to send for persons and papers and all depositions and affidavits and other evidence in any form whatsoever heretofore taken, where the witnesses giving said testimony are dead, or now living beyond the limits of said Territory, and to use every fair and reasonable means within their reach for the purpose of determining the rights of persons claiming such citizenship, or to protect any of said nations from fraud and wrong, Rolls so prepared by them shall be hereafter held and considered to be the true and correct rolls of persons entitled to the rights of citizenship in said several tribes." *Provided*, That if the tribe or any person be aggrieved with the decision of the tribe's authorities or commission provided for in this act, it or he may appeal from such decision

to the United States district court: *Provided, however,* That the appeal shall be taken within sixty days, and the judgment of the court shall be final; that the said commission, at the expiration of six months, cause a complete roll of citizenship of each of said nations to be made up from their records and add thereto the names of citizens whose right may be conferred under this act and said rolls shall be and are hereby made the rolls of citizenship of said nations or tribes, subject to the determination of the United States courts ... provided herein. The commission is hereby required to file the lists of members as they finally approve them with the Commissioner of Indian Affairs to remain there for use as a final judgment of the duly constituted authorities. And said commission shall also make a roll of freedmen entitled to citizenship in said tribes and shall include their names in the list of members to be filed with the Commissioner of Indian Affairs."

Under this act of Congress above quoted all *bona fide* members of the tribe of Chickasaw or Choctaw Indians, who acquired their membership or citizenship by legislative adoption or by intermarriage, have had the right to apply to the Dawes commission to have their names enrolled as members of the tribe to which they belong, and this commission had the right to pass upon their application; and if the evidence showed that they were members of the tribe in accordance with the laws and treaties, then the commission would enroll their names as members of such tribe; otherwise the application was denied, and upon a denial of such application the applicants had the right under this law to appeal to the United States court in the Indian Territory

and there present his application for the decision and adjudication of such court, and it is on account of the language employed in the opinion written in this case which suggests to the minds of the attorneys representing the Chickasaw nation that the citizenship of A. B. Roff by virtue of the act of 1883, being but a personal right, was withdrawn by that act, and hence it is that it is agreed by counsel for defendant in error that any law or constitution of the Chickasaw nation or any treaty by the United States Government with the Chickasaws or Choctaws, which are generally referred to in the complaint filed in the court below, and not copied in full, may be considered by this honorable Court in determining whether or not the right of Chickasaw citizenship is a valuable and vested right or a personal right which can be withdrawn with impunity by the Chickasaw authorities in the absence of the consent of the United States Government, a party to the treaty, which evidently intended that the two should be protected in their acquisition of rights of citizenship and rights of property in the Chickasaw nation.

To our minds there can be no question but that the right of Chickasaw citizenship, under the treaties and under the constitution above quoted and the laws of the Chickasaw nation, is a vested and valuable right, and carries with it a property right, which is inseparable from the right of citizenship, and that the destruction of the right of Chickasaw citizenship *ipso facto* is a destruction of the right of property granted to the intermarried and adopted Chickasaw citizen by the terms of the treaty of 1866 and confirmed by the constitution of the Chickasaws of 1867; but if it be admitted that the right of citizenship thus acquired by the plaintiff in error and his wife, who, although

the record does not disclose the fact, died long prior to the act of 1883, can be withdrawn by the Chickasaw legislature, we would respectfully call this Court's attention to the Chickasaw constitution of 1867, quoted above, which reads:

"The legislature shall pass no retrospective law, or any law, impairing the obligation of contracts."

Then what did the Chickasaws mean by this section of the Constitution? Evidently it was intended that the legislature of the Chickasaw nation could not pass any retroactive law. In defining the word "retrospective" and "retroactive" it is said that retroactive or retrospective means affecting what is past; operating upon a past event or transaction. Retrospective is the more common. Any statute which takes away or impairs vested rights acquired under existing laws, or creates a new law, imposes a new duty, or attaches a new disability in respect to transactions or considerations already passed must be treated as retrospective. (Anderson's Dictionary of Law, page 897, and authorities cited.)

So it will be seen that not only was the act of 1883 of the Chickasaw legislature contrary to and in violation of the terms of the treaty of 1866, but it was directly in contravention with the Chickasaw constitution of 1867, and void for that reason. The treaties between the United States Government and the Choctaw and Chickasaw tribes must be treated as a statute of the United States, because none of them are effective until they are enacted into a law. It would, indeed, be a harsh and unjust decision to hold that the white man who came to the Chickasaw nation upon invitation of the Chickasaw Indians and pursuant to the treaty of 1866, and married a

member of the tribe in 1867, and acquired the right of citizenship by virtue of such marriage, and who has resided continuously in the Chickasaw nation since said date and acquired property rights and varied interests as the result of his energy and enterprise, by an act of the Chickasaw legislature is to be deprived of his right of citizenship and his right of property thus acquired upon such right of citizenship, and that, too, without the consent of the United States Government, a party to the treaty, under the terms of which he was granted a right of Chickasaw citizenship which carried with it all the rights of a member of the tribe of Chickasaw Indians by blood.

We do not contend that the opinion of this Court in this cause can be construed to mean that the plaintiff in error by reason of such act of the legislature is deprived of any right except a personal right; but for the reason that he alleged in general terms that his right of Chickasaw citizenship was acquired under the treaties made by the Chickasaws and Choctaws and under the constitution and laws of the Chickasaw nation. We take it that this honorable Court did not consider those portions of the treaties and the constitution of the Chickasaws which showed plainly that his right of Chickasaw citizenship and right of property are inseparable, and to withdraw and abrogate the one is an absolute destruction of the other. It may be, and as far as our researches have gone it is a fact, that this question of vested rights, as applied to the right of Chickasaw citizenship, was never before presented to this tribunal for its consideration and adjudication; but until recently questions of this kind were settled by decisions rendered by the Attorney-General of the United States, and in a letter writ-

ten by Attorney-General Garland and addressed to the Secretary of the Interior, dated January 23, 1889, a full discussion of the right of Cherokee citizenship is found, and in that letter the Attorney General says :

"I find from the papers submitted no authority to supervise this act of the Chief Justice, and I certainly think there is none. The right of citizenship is determined in this proceeding and becomes an adjudicated matter, and to leave it an open question for review by the legislature, or the counsel or other authority, would be to unsettle every right of citizenship established under that act.

"In this, as in all other things, there must be a termination and ending somewhere. A proper construction of this act is that the judgment of the Chief Justice rendered according to the terms of such act is the final determination and serves nothing for review. These principles of law would apply, if possible, with more force here than in ordinary cases, because it appears from the papers submitted that the Cherokee council invited the North Carolina Cherokees to come to the Cherokee nation and to become identified therein as citizens, and this plan of making them citizens was adopted to carry out the purpose of an invitation; and it therefore follows as a consequence, in reply to your second inquiry, that the Department of the Interior is under no laws to respect the decision of the Cherokee authorities in pursuance to the right of a commission established by the Cherokee legislature to inquire into the claims to citizenship of those persons adjudged to be citizens as designated in the first-named inquiry. The right of citizenship cannot be forfeited by legislative act, directly and indirectly, no more than can be the right of property." (19 Opinions Attorney General, page 233.)

The demurrer filed to the complaint in the court below admitted the citizenship of A. B. Roff, and he appealed this

case on the theory that because he was an intermarried member of the tribe of Chickasaw Indians that, under the acts of Congress of 1889 and 1890, the United States court in the Indian Territory had jurisdiction of a controversy between himself as a member of said tribe by intermarriage and a member of the tribe by blood; and it was this construction we sought to have this honorable Court place upon the act of Congress conferring jurisdiction upon the United States courts in the Indian Territory, and had not the slightest idea that this Court would hold that the Chickasaw authorities could and did withdraw the citizenship of A. B. Roff acquired in the manner above stated; and because the opinion of this honorable Court may be susceptible of more than one construction and may result in the inferior courts, whose duty it is to pass upon the rights of the plaintiff in error to Chickasaw citizenship, in the light of all the treaties and Chickasaw laws, this petition for rehearing is made to the end that the lower court may be advised as to the meaning of this honorable Court with reference to withdrawing the citizenship of A. B. Roff, which, under the treaty as presented in this case, is a withdrawal of his right of property, and for the foregoing reasons we most respectfully request that the decision of this Court as rendered on November 29, 1897, be set aside and a judgment now rendered in accordance with the treaties, constitution, and laws as copied in this brief, which, by the agreement of counsel, hereto attached, may be considered by this Court as true copies of the laws under which the rights of the plaintiff in error must be determined.

Respectfully submitted.

C. L. HERBERT,
Counsel for Plaintiff in Error.

We, the undersigned attorneys for the defendant in error, Mrs. Louisa Burney, as administratrix of B. C. Burney, deceased, hereby accept service of a true copy of the foregoing brief and waive any further notice of service of same, and agree that the treaties and the portions of the Chickasaw constitution and laws as copied in said brief are correctly copied, and are the treaties, laws, and constitution that govern the questions involved in said cause, and agree that the petition for a rehearing in this case may be submitted to the Supreme Court of the United States, either upon written briefs or oral argument of the plaintiff in error without further notice to us, at any time said court will consider the same.

ROBERT H. WEST,

H. C. POTTERF AND

W. F. BOWMAN,

Attorneys for Defendant in Error, Mrs.

Louisa Burney, Administratrix.

SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM 1897.

NO. 34

A. B. ROFF,
Plaintiff in Error,
vs.
LOUISA BURNEY, Adm'r'x of
B. C. Burney, deceased,
Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

We think there can be no question as to the correctness of the Court's ruling in sustaining the demurser of plaintiff's complaint in this action. The language of the Act of May 2, 1890, (26 U. S. Stat. at large, page 94) Sections 30 and 31, quoted in plaintiff's brief, appears to us conclusive, of the fact that the United States Court was without jurisdiction to try this cause. Especially the last clause of Section 31, which reads as follows: "But nothing in this act shall be so construed as to deprive any of the courts of the civilized nations of the exclusive jurisdiction over all cases arising wherein members of said Nations, whether by treaty, blood or adoption, are the sole parties, etc." The exclusive jurisdiction over controversies between members

of their own tribe was not conferred on the Choctaw and Chickasaw Courts by this Act of May 2, 1890, nor by the Act of 1889, which established the United States Courts in the Indian Territory, but was conferred by the treaties between said Indians and the United States. Article 7 of the Treaty of June 22, 1855, between the United States and the Choctaw and Chickasaw Indians provides that "The Choctaws and Chickasaws shall be secured in the unrestricted right of self-government, and full jurisdiction over persons and property within their respective limits; excepting, however, all persons with their property who are not by birth, adoption or otherwise citizens or members of either the Choctaw or Chickasaw tribe."—*Revision of Indian Treaties*, page 277.

From this it will appear that the exclusive jurisdiction of the tribal courts over controversies between citizens or members of the Choctaw and Chickasaw tribe was vested in them by treaty, or, rather, was recognized by treaty as inherent in them, the said tribes being at least quasi sovereignties.

It therefore cannot be true as contended by plaintiff that, by section 31 of the Act of 1890, or any of the other acts relating to the establishment of United States Courts in the Indian Territory, Congress intended to confer upon the tribal courts a jurisdiction which they did not have, namely, in controversies arising between certain classes of their own citizens, but it was clearly their intention to negative the idea that anything in these acts should be construed so as to deprive Indian Tribes of the exclusive right to determine controversies between their own members, which power belonged to them as sovereignties and had long been recognized by treaty.

If we are right in our contention, and it seems that

the above acts should, unquestionably, be so construed, then it is immaterial whether the plaintiff is a citizen by "blood, treaty or adoption," if he is a member of the Chickasaw Tribe as plaintiff alleges, and we admit that he is, the United States Court could have no jurisdiction to try a controversy between him and another member of the tribe. But we cannot forbear from calling the Court's attention to the glaring fallacy in the plaintiff's argument in which he undertakes to show that he is not a citizen by "adoption or treaty." If not a citizen of the Chickasaw tribe by adoption or treaty, where does he acquire his citizenship? He says he is a Chickasaw by intermarriage, that he married a member of the Chickasaw tribe in accordance with the marriage laws of said tribe, and thereby became a member of the tribe. By a well settled rule of International law the citizenship of a woman follows that of her husband. Then why should the rule be reversed when a man marries a woman who is a member of the Choctaw or Chickasaw tribe of Indians? The answer is plain: because the treaty between the tribes and the United States and the tribal laws passed in pursuance of the treaty provide that by such marriage the man shall become a member of the tribe. Article 38 of the Treaty of April 28, 1866, with the Choctaws and Chickasaws provides that, "Every white person who having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw Nation, or who has been adopted by the legislative authorities, is to be deemed a *member of said Nation*, and shall be subject to the laws of the Choctaw and Chickasaw Nations according to his domicile, and to prosecution and trial before their tribunals, and to punishment according to their laws in all respects, as though he was a native Choctaw or Chickasaw."—*Revision of Indian Treaties, page 300.*

We therefore maintain that plaintiff, according to the allegations in his complaint is clearly a Chickasaw

by treaty, for it is the treaty above referred to that makes him a Chickasaw citizen.

It is a matter of history that prior to the treaty of 1866 the position of the intermarried men residing in the Indian Territory was anomalous, the jurisdiction of the tribal courts was denied, and the article, above quoted, was inserted in the treaty for the purpose of fixing their status in the Choctaw and Chickasaw Nations, making them members of the Nation and placing them under the jurisdiction of the tribal courts.

If we are right, then the complaint of the plaintiff that "he came to his own and his own received him not," cannot avail him, for if the United States Court has no jurisdiction over the cause, the fact that plaintiff alleges that "the courts of the Chickasaw Government have refused to entertain jurisdiction of any controversy between this plaintiff and a member of said tribe of Chickasaw Indians," could not confer the jurisdiction. But we wish to call the Court's attention to the fact that plaintiff does not show in his complaint that he ever sought relief in this cause from the tribal courts. He alleges in a general way that the Courts of the Chickasaw Government have refused to entertain jurisdiction on any controversy between this plaintiff and a member of the Chickasaw tribe, but nowhere does he allege that he made any effort to have the tribal courts entertain jurisdiction of this suit, and that they refused. The complaint was specially excepted to on this ground (R 5).

We think the United States Court had no jurisdiction to try this cause, and that the judgment sustaining the demuror and plea to jurisdiction was correct, and ask that it be affirmed.

Respectfully submitted,

H. C. POTTERF,
W. F. BOWMAN,
Counsel for Defendant in Error.

ROFF *v.* BURNEY.

ERROR TO THE UNITED STATES COURT FOR THE INDIAN TERRITORY.

No. 34. Submitted October 15, 1897. — Decided November 29, 1897.

A right of citizenship in an Indian Nation, conferred by an act of its legislature, can be withdrawn by a subsequent act; and this rule applies to citizenship created by marriage with such a citizen.

Whether any rights of property could be taken away by such subsequent act, is not considered or decided.

Statement of the Case.

THIS case comes from the United States Court for the Indian Territory on a certificate as to jurisdiction. The amended complaint filed in that court November 6, 1893, besides stating a cause of action in favor of the plaintiff against the defendant, alleges the following facts bearing on the question of jurisdiction: That the plaintiff is a natural born citizen of the United States of America; has never renounced his allegiance to said government, and has never taken an oath of allegiance to any foreign government of any kind whatever; that he has ever been and is yet a citizen of the United States; that the legislature of the Chickasaw Nation, on October 7, 1876, passed the following act:

"SECTION 1. Be it enacted by the legislature of the Chickasaw Nation, That the right of citizenship is hereby granted to the following-named children and nephews of William H. Bourland: Amanda, Matilda, Gordentia and Run Hannah."

That by this act, which was simply a confirmation of a prior statute, passed in 1857, the parties named therein became adopted citizens of the Chickasaw Nation; that he was duly and legally married to one of the parties named therein, to wit, Matilda Bourland, while she was such adopted citizen; that thereafter, and on October 11, 1883, the legislature of the Chickasaw Nation passed another act, as follows:

"SEC. 1. Be it enacted by the legislature of the Chickasaw Nation, That the right of citizenship granted to the following-named children and nephews of W. H. Bourland, Amanda, Matilda, Gordentia and Run Hannah, approved October 7, 1876, the same is hereby repealed and annulled.

"SEC. 2. Be it further enacted, That the governor is hereby directed and required to remove said parties and their descendants beyond the limits of this nation, and that this act take effect from and after its passage."

And that since the passage of the last-named act the Chickasaw government and all the officials thereof have refused to recognize this plaintiff as a member of the Chickasaw tribe, or a citizen of said Chickasaw Nation, and that the courts of that nation have refused to entertain jurisdiction of any controversy between him and any member of the tribe of Chick-

Statement of the Case.

asaw Indians, and still refuse to entertain jurisdiction of such controversies.

Article 7 of the treaty of June 22, 1855, between the United States and the Choctaw and Chickasaw tribes, 11 Stat. 611, 612, is as follows:

"So far as may be compatible with the Constitution of the United States and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, the Choctaws and Chickasaws shall be secured in the unrestricted right of self-government, and full jurisdiction, over persons and property, within their respective limits; excepting, however, all persons with their property, who are not by birth, adoption or otherwise citizens or members of either the Choctaw or Chickasaw tribe."

Article 38 of the treaty with the same tribes, of date April 28, 1866, 14 Stat. 769, 779, provides:

"Every white person who, having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw Nation, or who has been adopted by the legislative authorities, is to be deemed a member of said nation, and shall be subject to the laws of the Choctaw and Chickasaw Nations according to his domicil, and to prosecution and trial before their tribunals, and to punishment according to their laws in all respects as though he was a native Choctaw or Chickasaw."

Section 6 of the act creating the United States Court in the Indian Territory, approved March 1, 1889, c. 333, 25 Stat. 783, 784, reads:

"That the court hereby established shall have jurisdiction in all civil cases between citizens of the United States who are residents of the Indian Territory, or between citizens of the United States, or of any State or Territory therein, and any citizen of or person or persons residing or found in the Indian Territory, and when the value of the thing in controversy, or damages or money claimed shall amount to one hundred dollars or more: *Provided*, That nothing herein contained shall be so construed as to give the court jurisdiction over controversies between persons of Indian blood only."

Opinion of the Court.

This was amended by the act of May 2, 1890, c. 182, 26 Stat. 94, which, in section 30, p. 94, contains this proviso:

"Provided, however, That the judicial tribunals of the Indian nations shall retain exclusive jurisdiction in all civil and criminal cases arising in the country in which members of the nation by nativity or by adoption shall be the only parties."

And in section 31, p. 96, it was also provided:

"But nothing in this act shall be so construed as to deprive any of the courts of the civilized nations of exclusive jurisdiction over all cases arising wherein members of said nations, whether by treaty, blood or adoption, are the sole parties, nor so as to interfere with the right and power of said civilized nations to punish said members for violation of the statutes and laws enacted by their national councils where such laws are not contrary to the treaties and laws of the United States."

Mr. C. L. Herbert for plaintiff in error.

Mr. H. C. Potter and *Mr. W. F. Bowman* for defendant in error.

MR. JUSTICE BREWER, after stating the case, delivered the opinion of the court.

The condition of the Indians and Indian tribes within the limits of the United States is anomalous. The tribes, though in certain respects regarded as possessing the attributes of nationality, are held to be not foreign, but domestic dependent nations. *Cherokee Nation v. Georgia*, 5 Pet. 1; *Worcester v. Georgia*, 6 Pet. 515; *Choctaw Nation v. United States*, 119 U. S. 1; *Cherokee Nation v. Kansas Railway Company*, 135 U. S. 641. While the Indians and the territory which may have been specially set apart for their use are subject to the jurisdiction of the United States, and Congress may pass such laws as it sees fit prescribing the rules governing the

Opinion of the Court.

intercourse of the Indians with one another and with citizens of the United States, and also the courts in which all controversies to which an Indian may be a party shall be submitted, *United States v. Rogers*, 4 How. 567; *United States v. Kagama*, 118 U. S. 375; *Gon-Shay-Ee, Petitioner*, 130 U. S. 343; *Cherokee Nation v. Kansas Railway Company*, *supra*, the mere fact that a citizen of the United States has become a member of an Indian tribe by adoption may not necessarily cancel his citizenship. As said by Chief Justice Taney, in *United States v. Rogers*, *supra*, p. 573, "whatever obligations the prisoner may have taken upon himself by becoming a Cherokee by adoption, his responsibility to the laws of the United States remained unchanged and undiminished." Indeed, by section 43 of the act of May 2, 1890, c. 182, 26 Stat. 99, provision is made for the naturalization of members of the Indian tribes in the Indian Territory, with a proviso "that the Indians who become citizens of the United States under the provisions of this act do not forfeit or lose any rights or privileges they enjoy or are entitled to as members of the tribe or nation to which they belong."

Now, according to this complaint, plaintiff was a citizen of the United States. Matilda Bourland was not a Chickasaw by blood, but one upon whom the right of Chickasaw citizenship had been conferred by an act of the Chickasaw legislature. The citizenship which the Chickasaw legislature could confer it could withdraw. The only restriction on the power of the Chickasaw Nation to legislate in respect to its internal affairs is that such legislation shall not conflict with the Constitution or laws of the United States, and we know of no provision of such Constitution or laws which would be set at naught by the action of a political community like this in withdrawing privileges of membership in the community once conferred. The Chickasaw legislature, by the second act, whose meaning is clear though its phraseology may not be beyond criticism, not only repealed the prior act but cancelled the rights of citizenship granted thereby, and further directed the governor to remove the parties named therein and their descendants beyond the limits of the nation. This act was

Opinion of the Court.

not one simply taking effect as of the date of its passage, and then withdrawing rights admitted to have been theretofore legally granted, but was retroactive in its scope, and purported to annul and destroy all that had ever been attempted to be done in respect to the matter. Whether any rights of property could be taken away by such subsequent act need not be considered. It is enough to hold that all personal rights founded on the mere status created by the prior act fell when that status was destroyed. Plaintiff never took any oath of allegiance to the Chickasaw Nation; never in terms relinquished his full rights as a citizen of the United States. Doubtless, by intermarriage with one who was at the time by legislative act a Chickasaw citizen, he acquired the rights and privileges of a member of that tribe or nation, but when that which was the foundation upon which such acquisition rested was taken away by act of the nation, then all those rights and privileges ceased. The tie which bound him to the nation was his wife's citizenship. That tie the nation destroyed. Its destruction released him. That such was the effect of this legislative act is established by the conduct of the Chickasaw government and all its officials, for they have refused to recognize plaintiff as any longer a member of the Chickasaw Nation, and the courts of that nation have declined to entertain jurisdiction of any suits brought by him against a Chickasaw. The validity of the act withdrawing citizenship from the wife of plaintiff, and the consequent withdrawal from plaintiff of all the rights and privileges of citizenship in the Chickasaw Nation, has been practically determined by the authorities of that nation, and that determination is not subject to correction by any direct appeal from the judgment of the Chickasaw courts. It follows, therefore, that his right as a citizen of the United States to appeal to the Federal courts to take jurisdiction of his claims against one of the Chickasaw Nation must be sustained, for it cannot be that a citizen of the United States residing in the Chickasaw Nation can be wronged without an opportunity of redress in some judicial tribunal. We are of opinion, therefore, that the plea to the jurisdiction was wrongfully

Statement of the Case.

sustained, and the judgment of the United States Court for the Indian Territory will be

Reversed and the case remanded, with instructions to overrule the plea to the jurisdiction.

OGDEN CITY & ARMSTRONG